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Executive Summary

The sixth deliverable of Work Package No 5 (WP 5) presents the outcome of the analysis and critical assessment of EU human rights engagement with the Organization of American States (OAS). The EU has committed itself in the Treaty on European Union to promote and protect human rights and to ‘develop relations and build partnerships with [...] international, regional or global organisations’. The EU’s 2012 Strategic Framework on Human Rights and Democracy explicitly identifies the OAS as one of the regional organisations with which the Union works in partnership in order to strengthen regional human rights mechanisms. In light of this commitment, the present report aims at four goals: mapping the human rights cooperation of the EU with the OAS, critically assessing this cooperation from a policy and institutional perspective, identifying specific and structural flaws in the EU’s approach, and looking for creative ways to facilitate a critical but constructive and effective relationship between the EU and the OAS.

The deliverable consists of seven chapters. The first chapter is introductory. It explains the aims, scope and methodology of the analysis. The second chapter focuses on the legal and policy framework of EU-OAS relations. In a first section it traces the Union’s human rights commitment throughout the relevant legal instruments and policy documents; it then examines the legal framework for EU-OAS human rights cooperation. The third chapter maps the institutional framework of the EU-OAS relations with respect to human rights. It identifies the main EU and OAS bodies relevant for human rights protection, with special attention paid to the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). The fourth chapter describes the goals and objectives of the EU with regard to the OAS in the field of human rights. Special attention is paid to the Memorandum of Understanding signed between the European Commission and the OAS in 2009. The fifth chapter presents tools and methods employed by the EU in its engagement with the OAS in the field of human rights. The analysis distinguishes between a political approach and a thematic approach and puts emphasis on the aspect of financing. The sixth chapter contains two case studies, used to contextualise the analysis of the previous chapters. The first case study analyses the influence of EU-OAS cooperation on the development of the IACHR and the IACtHR. The second case study focuses on the impact of this cooperation on human rights protection at OAS member state level, using the example of the Republic of Peru. The seventh chapter assesses the EU’s engagement described in previous chapters from the perspective of coordination, coherence, consistency, effectiveness, realisation, influence and leadership. The final conclusions are presented in the eighth chapter.

The research shows that the EU has a significant impact on the internal and public work of the IACHR and the IACtHR – the OAS bodies most relevant from the perspective of human rights. Along with this international impact, at the national level, the Union’s biggest contribution in Peru is based on civil society human rights projects implemented nationwide. Although EU-OAS human rights cooperation yields essentially positive results at the regional and national level, further coordination is required in order to achieve EU internal mandates.

List of abbreviations

ACHR	American Convention on Human Rights
ASEAN	Association of Southeast Asian Nations
CAPS	Centro de Atención Psicosocial
CIDI	Inter-American Council for the Integral Development
CJEU	Court of Justice of the European Union
COHOM	Council Human Rights Working Group
COLAT	Council Working Party on Latin America
COTRA	Council Working Party on Transatlantic Relations
DCI	Development Cooperation Instrument
DG DEVCO	European Commission Directorate-General for International Cooperation on Development
DROI	European Parliament Subcommittee on Human Rights
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
EUSR	EU Special Representative for Human Rights
GA	General Assembly
HRD	Human Rights Defender
HR/VP	High Representative for Foreign Affairs and Security Policy/Vice President of the Commission
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IASHR	Inter-American Human Rights System
IDL	Instituto de Defensa Legal
IHL	International Humanitarian Law
LGBTI	Lesbian, gay, bisexual, transgender and intersex
LUM	Lugar de la Memoria, la Tolerancia y la Inclusión Social – Place of Memory, Tolerance and Social Inclusion
MIP	Multiannual Indicative Programme
MoU	Memorandum of Understanding
OAS	Organization of American States
OAS GA	OAS General Assembly
PM	Place of Memory
PSC	Political and Security Committee
PTRC	Peruvian Truth and Reconciliation Commission
SAARC	South Asian Association for Regional Cooperation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
WP	Work Package

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I. Introduction

A. Aim

This report constitutes Deliverable D5.6 of the FP7 project FRAME – ‘Fostering Human Rights among European (External and Internal) Policies’. It presents the outcome of the analysis and critical assessment of European Union’s (EU) human rights cooperation with the Organization of American States (OAS).

The Treaty of Lisbon has enshrined the promotion and protection of human rights and the commitment to effective multilateralism as two of the guiding principles of EU external action. This observation is based on Art. 2 TEU, which recognizes human rights as one of the founding values of the EU, and on Art. 3(5) and 21 TEU which clearly state that human rights protection is among the objectives of EU external action. In its relations with the wider world, the EU is obliged to pursue multilateral solutions, in particular to ‘develop relations and build partnerships with [...] international, regional or global organisations’, as long as they share certain principles, including human rights, democracy and the rule of law (Art. 21(1) TEU). The EU’s 2012 Strategic Framework on Human Rights and Democracy consequently states that the Union ‘will work in partnership with regional and other organisations such as the African Union, ASEAN, SAARC, the Organisation of American States, the Arab League, the Organisation of Islamic Cooperation and the Pacific Islands Forum with a view to encouraging the consolidation of regional human rights mechanisms’.¹ In the same vein, the Action Plan commits the European External Action Service (EEAS) and the EU member states to ‘intensify dialogue with other regional organisations and support and engage with emerging regional organisations and mechanisms for the promotion of universal human rights standards’.²

The OAS is explicitly mentioned in the Strategic Framework as one of the regional organisations with which the EU seeks to engage. With its roots reaching back to the First International Conference of American States (1889-1890), the OAS is considered to be the oldest regional organisation in the world. It counts all 35 sovereign states of the Americas among its members and has accepted 70 permanent observers, including the EU.³ Most importantly, for the purposes of this study, the OAS places considerable emphasis on the promotion and protection of human rights. It has developed a system of Inter-American human rights instruments and institutions, which have considerably contributed to the promotion and protection of human rights in the region. Already in 1948, the American states adopted the American Declaration of the Rights and Duties of Man – the first general international human rights instrument – at the same time as the OAS Charter. In 1959, the OAS created the Inter-American Commission on Human Rights (IACHR), whose mandate includes the promotion of the observance and protection of human rights and the consultation of the OAS on these matters (Art. 106 OAS Charter). In 1969, the American Convention on Human Rights (ACHR) was adopted. It entered into force in 1978. A year later, the OAS established the Inter-American Court of Human Rights (IACtHR) as an autonomous judicial body to monitor compliance with the American Convention on

¹ Council of the European Union, ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’, Doc No 11855/12, 25 June 2012.

² *ibid*, action no 36.

³ OAS, ‘Permanent-observer status for the European Communities in the Organization of American States’, General Assembly Res AG/Res. 996 (XIX-O/89) (Washington DC 18 November 1989).

Human Rights (ACHR) and to provide interpretations of the ACHR and other human rights treaties which are binding on the OAS member states (Art. 1 IACtHR Statute).

Given the common focus on human rights promotion and protection, cooperation between the EU and the OAS has been intensified in recent years. Both organisations concluded a Memorandum of Understanding (MoU) in 2009, which lists human rights prominently as the first area for dialogue and cooperation.⁴ Based on the MoU, annual EU-OAS policy dialogues have been held since 2012, with human rights high on the agenda.⁵ EU-OAS cooperation also has a significant financial dimension. The European Instrument for Democracy and Human Rights (EIDHR), for example, has been contributing funds to support the activity of the OAS in the field of human rights aspects, *inter alia* by backing the work of the Inter-American Human Rights System on vulnerable and excluded groups.⁶

In light of the Union's strong commitment to multilateralism in general and to the cooperation with other regional organisations in the area of human rights in particular, the present report aims at:

- Mapping the human rights cooperation of the EU with the OAS
- Critically assessing this cooperation from a policy and institutional perspective
- Identifying specific and structural flaws in the EU's approach
- Looking for creative ways to facilitate a critical but constructive and effective relationship between the EU and the OAS

Through this comprehensive analysis of the various dimensions of EU-OAS interaction, the report aims to advance existing scholarship on the topic, and to create a broad knowledge base for future research.

B. Methodology

The research for this report is based on a set of different methodologies, in particular the analysis of primary and secondary sources and data-gathering via semi-structured (confidential) interviews.

Primary sources analysed for this report include official documents from the EU and the OAS. EU documents were collected using the Official Journal of the EU,⁷ the EUR-Lex database,⁸ the public register of the Council of the European Union,⁹ the register of the Court of Justice of the European

⁴ Memorandum of Understanding Between the European Commission and the General Secretariat of the Organization of American States, 17 December 2009, available at <http://der.oas.org/Permanent_Observers/MoU%20EU.pdf>.

⁵ EEAS, 'Democracy and human rights on agenda at first EU-Organization of American States Policy Dialogue', 6 March 2012, <http://eeas.europa.eu/top_stories/2012/060312_oas_en.htm>.

⁶ EIDHR, 'Annual Action Programme 2013 for the European Instrument for Democracy and Human Rights (EIDHR) to be financed under budget line 19 04 01 of the general budget of the European Union', <www.eidhr.eu/files/dmfile/AAP2013.pdf>, action fiche 9; see also OAS, 'OAS and European Union Sign Financing Agreement to Strengthen the Inter-American Human Rights System', press release, 22 March 2014, <www.oas.org/en/media_center/press_release.asp?sCodigo=E-102/14>.

⁷ See <<http://eur-lex.europa.eu/oj/direct-access.html>>.

⁸ See <<http://eur-lex.europa.eu/>>.

⁹ See <<http://register.consilium.europa.eu/content/int?lang=EN&typ=SMPL>>.

Union (CJEU)¹⁰ and the conclusions database on the website of the European Council.¹¹ They comprise, among others, EU primary and secondary law, resolutions of the European Parliament, and other policy documents. The methods of analysis range from keyword searches to textual and legal analyses, depending on the type of document and the research context.

Secondary sources used for this report include published academic articles and books, working papers and policy reports. They were collected through surveys in various databases and library catalogues.

In addition a series of semi-structured interviews with key policy-makers, experts and other stakeholders was conducted, serving primarily to align the information obtained from the interviewees with practice and to complement the report with (additional) data not otherwise available from primary or secondary sources. These semi-structured interviews were conducted in person in the offices of the EU Delegation to Peru and via videoconferencing. The interview partners included representatives from the EU headquarters in Brussels, both consultants and administration offices, and representatives of the EU Delegation to Peru. All interviews were carried out under the Chatham House Rule.¹² In line with this, the report does not disclose the identity or the affiliation of the speaker(s), nor that of any other participant.

C. Structure

The report will firstly provide a brief theoretical background with regard to the EU's human rights commitments in its external action as well as an analysis of the Union's legal background for human rights cooperation with the OAS (chapter II). Secondly, the report will include a comprehensive analysis of the institutional aspects of EU-OAS relations in the area of human rights, comprising a mapping of all involved actors within the OAS and the EU framework (chapter III). Thirdly, the analysis will focus on the substantive goals and objectives of the EU with regard to the OAS and the strategy development process in the EU. A separate sub-chapter will assess the human rights implications of agreements, strategies and action plans adopted by the EU in relation to the OAS and its member states or jointly by the EU and the OAS (chapter IV). Subsequently, the spectrum of tools and methods employed by the EU in its human rights cooperation with the OAS will be highlighted, with a sub-chapter focusing on financing (chapter V). Two case studies will conclude the analysis, addressing the IACtHR and the IACHR, as well as the impact of the EU activities on the level of human rights protection in Peru (chapter VI). Finally, the report will provide a concluding evaluation, identifying specific and structural achievements and flaws in the EU's human rights cooperation with the OAS (chapter VII).

¹⁰ See <http://curia.europa.eu/jcms/jcms/j_6/>.

¹¹ See <<http://www.european-council.europa.eu/council-meetings/conclusions>>.

¹² Chatham House – The Royal Institute of International Affairs, 'Chatham House Rule', <www.chathamhouse.org/about/chatham-house-rule>.

II. Legal and policy framework of EU-OAS relations

A. The place of human rights in EU external policy

Art. 205 TFEU requires that the EU's action on the international scene 'shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union'.

Provisions included in chapter 1 discussed below regulate a general commitment of the EU in its external relations to human rights.

Art. 3(5) TEU requires that 'in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to [...] the protection of human rights, in particular the rights of the child. [...]'

Art. 21(1) TEU stipulates that the EU should promote values on which it is based, including human rights:

the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, [...] The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, [...].

Art. 21(2)(b) TEU further develops and clarifies the EU's obligations in order to 'consolidate and support democracy, the rule of law, human rights and the principles of international law'. This should be achieved by defining and pursuing common policies and actions, as well as by working for a high degree of cooperation in all fields of international relations.

Art. 21(3) TEU specifies that the principles and objectives described above shall be respected and pursued in the development and implementation of the different areas (of all policies) of the EU's external action.

Art. 21(1) TEU reiterates the commitment of the EU to human rights understood as universal and indivisible in their nature. However, the TEU does not define or impose any specific objectives to be achieved by the EU in the field of human rights' aspects of its external action. Rather it leaves these issues to be decided by the European Council in its activity. Art. 22(1) of the TEU states that on the basis of the principles and objectives set out in Art. 21, which were briefly described above, it is the European Council which 'shall identify the strategic interests and objectives of the Union'. The decisions of the European Council:

on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States[...].

The provisions stated above establish principles governing the external relations of the EU. These principles include human rights. However, they neither 'categorize' nor define any priorities between human rights. Instead, they underline the universal and indivisible nature of human rights. The only exception may be noted with respect to the rights of the child. The thematic priorities can be reconstructed from other documents: EU Human Rights Guidelines and the EU Strategic Framework and Action Plan on Human Rights and Democracy, reviewed below.

The general commitment of the EU to human rights is reiterated in a series of thematic guidelines, commonly known as the 'EU Human Rights Guidelines'. At the time of drafting this report, 11 such guidelines were adopted. They were adopted by the Council of the European Union, therefore they cannot be perceived as identification of the strategic interests and objectives of the EU within the ambit of Art. 22 TEU. They are not even legally binding. Despite this, they are considered to be a signal of the EU's priorities in the field of human rights.

The guidelines contain operational parts, which are related to the EU's external actions. In these parts, the guidelines set up specific actions that are to be undertaken with respect to the human rights which are the theme of the particular guidelines. Typically, the operational parts refer also to actions in multilateral fora, by references to actions related for example to 'international and regional organizations'. The operational part of the EU Human Rights Guidelines on Freedom of Expression Online and Offline specifically refers to cooperation with 'the special rapporteurs having related mandates from the AU, OAS, OSCE and OIC'. The EU Guidelines on Human Rights dialogues with third countries expressly recognise that different types of human rights dialogues exist, including 'in particular' also relations between the EU and Latin America.

Apart from the EU Human Rights Guidelines, the Council of the European Union adopted the EU Strategic Framework and Action Plan on Human Rights and Democracy. These two documents 'set out the EU's vision for its global human rights policy in the years ahead and establish a detailed list of actions that the EU will implement in order to promote these goals in practice'.¹³ They are a 'guiding reference' for placing human rights within the EU's external action.¹⁴

The EU Strategic Framework on Human Rights and Democracy (hereinafter referred to as the 'Strategic Framework') describes the objectives of the EU in the field of human rights. It confirms that '[t]he European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. These principles underpin all aspects of the internal and external policies of the European Union'. The Strategic Framework underlines that human rights are 'legal norms' and that they are 'universally applicable'. The Strategic Framework reaffirms also the UE's commitment to the promotion and protection of 'all' human rights. It is irrelevant whether one considers a particular human right as being 'categorized' as civil and political right, or as 'economic, social and cultural' one.

With respect to the EU's external policies, the Strategic Framework states that the 'EU will promote human rights in all areas of its external action without exception'. It is to be done by working with bilateral partners ('the EU will place human rights at the centre of its relations with all third countries,

¹³ EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports), Doc No 9431/13, 13 May 2013, 9.

¹⁴ EU Annual Report on Human Rights and Democracy in the World in 2013, Doc No 11107/14, 23 June 2014, 13.

including its strategic partners'), as well as by working through multilateral institutions.¹⁵ Although in the latter instance special attention is paid to the context of the United Nations, the Strategic Framework makes express reference to the cooperation between the EU and the OAS. It states that the EU 'will work in partnership with regional and other organisations such as the African Union, ASEAN, SAARC, the Organisation of American States, the Arab League, the Organisation of Islamic Cooperation and the Pacific Islands Forum with a view to encouraging the consolidation of regional human rights mechanisms'.¹⁶

It should be noted that the Strategic Framework makes express reference to the Joint Communication of the European Commission and High Representative of the European Union for Foreign Affairs and Security Policy entitled 'Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach', hereinafter referred to as the 'Joint Communication'.¹⁷ The Joint Communication underlines that 'respect for human rights and fundamental freedoms is at the core of the European Union. The protection and promotion of human rights is a silver thread running through all EU action both at home and abroad'.¹⁸ The Joint Communication contains a separate heading dealing with 'regional organisations'. Among others, it states that

the EU will strengthen its cooperation on human rights and democracy with regional and intergovernmental organisations, both at the political level and at the local level, between EU Delegations and headquarters, field offices or missions of these organisations. It will use its cooperation with the Council of Europe and the OSCE more systematically. The EU should explore the possibilities of deepening cooperation with the AU, ASEAN, OAS and others, building on their consolidated or emerging regional human rights and democracy mechanisms. The EU should use its dialogues with different regions, such as ASEM, EULAC, AU/EU and ACP, to strengthen cooperation on human rights.¹⁹

The purpose of the EU Action Plan on Human Rights and Democracy (hereinafter referred to as the 'Action Plan') was to implement the Strategic Framework. The Action Plan 'builds upon the existing body of EU policy on human rights and democracy in external action, notably EU guidelines, toolkits and other agreed positions and the various financial instruments, in particular the European Instrument for Democracy and Human Rights'.²⁰

The Action Plan only covered the period until 31 December 2014. It listed 36 outcomes to be achieved, which correspond to the key messages of the Strategic Framework. The outcomes established in total

¹⁵ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (n 1) 2-3.

¹⁶ *ibid* 4.

¹⁷ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament and the Council: Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach', COM(2011) 886 final, 12 December 2011, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>>.

¹⁸ *ibid* 4. On p 10 the Joint Communication reaffirms: 'The EU is committed to putting human rights and democracy at the centre of its external action, as a 'silver thread' running through all that it does'.

¹⁹ *ibid* 16.

²⁰ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (n 1) 5.

97 actions (each outcome establishing one or more actions), which were aimed at achieving the respective outcomes.

The EU Action Plan contains a separate point VII entitled ‘working through multilateral institutions’, which contains point 36 entitled ‘strengthened regional mechanisms for human rights’. The external action to be undertaken by the EU is described as follows: ‘Continue to engage with the Council of Europe and the OSCE; intensify dialogue with other regional organisations and support and engage with emerging regional organisations and mechanisms for the promotion of universal human rights standards’. Although the description of the action does not contain an express mention of the OAS, it also covers the relationship between the EU and the OAS.

The above shows that strengthening human rights is at heart of the EU’s external policy, being grounded in EU primary law. Within this aim, cooperation with the OAS is specifically foreseen and expected.

B. Legal background for cooperation with the OAS within the EU

According to Art. 216(1) TFEU, the EU has powers to conclude international agreements

‘where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope’.

Such agreements bind both, the institutions of the EU and its member states.

In line with Art. 220 TFEU, the EU ‘shall also maintain such relations as are appropriate with other international organisations’, including the OAS. The EU delegations represent the EU at international organisations (Art. 221 TFEU).

With respect to certain areas of the UE’s activities TFEU provides for even more explicit legal ground for concluding international agreements by the EU. With respect to development cooperation, Art. 208(3) TFEU provides that ‘[t]he Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations’. Based on Art. 209(2) TFEU ‘[t]he Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 21 of the Treaty on European Union and in Article 208 of this Treaty’. Similar provisions apply with respect to economic, financial and technical cooperation (Art. 212(3) TFEU), humanitarian aid (Art. 214(4) TFEU). However, human rights – being ‘one of the objectives referred to in the Treaties’ – do not require such express provisions and the EU has the power to enter into specific agreements in this field.

From the perspective of the OAS, its Charter provides the OAS General Assembly (OAS GA) with the powers to ‘promote collaboration, especially in the economic, social, and cultural fields, with other international organizations whose purposes are similar to those of the Organization of American States’ (Art. 54(d)). In relation to this competence, one of the functions of the OAS General Secretariat is to ‘establish relations of cooperation, in accordance with decisions reached by the General Assembly or the Councils, with the Specialized Organizations as well as other national and international organizations’ (Art. 112(h)).

The European Community was given the status of a permanent observer at the OAS in 1989, when the OAS adopted General Assembly Resolution AG/RES. 996 (XIX-0/89).²¹

On 17 December 2009, the European Commission and the General Secretariat of the OAS concluded a Memorandum of Understanding (hereinafter referred to as the 'Memorandum').²² Although it does not constitute an agreement containing any legal obligations,²³ it establishes the framework for inter-institutional dialogue and cooperation.²⁴

In its preamble, the Memorandum directly refers to 'the common work in fields such as development, protection and promotion of human rights or democracy strengthening'. In the part related to the areas for dialogue and cooperation the Memorandum specifically refers to human rights: 'Particular attention should be paid to the priorities established by both sides, such as the following: a) Protection and Promotion of Human Rights (including, i.a., freedom of expression, promoting ethnic and racial equality and rights or protection of most vulnerable groups)'.²⁵ For example the commencement of the 'EU-OAS Policy Dialogue' in 2012 was a direct consequences of the signing of the Memorandum.

The first EU-OAS institutional dialogue was held on 22 February 2012 at the EU Headquarters in Brussels. This meeting focused on the promotion of human rights in the American region. Next, a second EU-OAS institutional-political dialogue was held on 21 March 2013 at OAS Headquarters in Washington DC., this meeting focused on enhancing human rights protection in the Americas.

What is notable, the scope of the Memorandum covers neither the United States of America nor Canada. It can be seen at the example of the definition of the 'purposes' of the Memorandum, where the European Commission and the General Secretariat of the OAS recognise the intention of mutual benefit and development of 'their dialogue and cooperation in areas of common concern in the Latin America and Caribbean (LAC) Region'.²⁶

A bi-regional Strategic Partnership was established in 1999.²⁷ As an element of this strategic partnership, during a summit held in January 2013 in Santiago de Chile, the 'EU-CELAC Action Plan 2013-2015' was adopted.²⁸ In the context of migration, it defines the main objectives of the cooperation, among others, to 'promote the full respect of human rights of migrants.' One of the expected results in this sphere is 'promoting full respect of human rights for all migrants and enhancing coherence in the fight and prevention of human trafficking and migrant smuggling networks, as well as in assisting victims. Improved fight against xenophobia, racism and all forms of intolerance.' In addition, in the section dealing with 'Investments and entrepreneurship for

²¹ During the plenary session held on 18 November 1989: 'To accord to the European Communities, in nature internationally and on an exceptional Permanent Observer to the Organization of American view of basis, States' (n 3).

²² See *supra* (n 4).

²³ According to point 9, the Memorandum 'does not contain obligations regarding international law' (n 4).

²⁴ *ibid*, point 6.

²⁵ *ibid*, point 5(a).

²⁶ *ibid*, point 4.

²⁷ EEAS/European Commission Directorate General for Development and Cooperation – Europeaid, 'Development Cooperation Instrument 2014-2020, Multiannual indicative regional programme for Latin America', <http://ec.europa.eu/europeaid/sites/devco/files/dci-multindicativeprogramme-latinamerica-07082014_en.pdf>, p 1.

²⁸ Council of the European Union, 'EU-CELAC Action Plan 2013-2015', Doc No 5748/13, 27 January 2013.

sustainable development’, the work programme aims to ‘promote public policies which encourage transparency on the part of enterprises as regards social, environmental and human rights matters.’ The expected outcome covers ‘bi-regional meeting on model enterprises applying the concept of corporate social responsibility as regards social, environmental and human rights matters.’

Based on the ‘EU-CELAC Action Plan 2013-2015’ and on the Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020, a ‘Development Cooperation Instrument 2014-2020 – Multiannual indicative programme for Latin America’ was adopted.²⁹ Multiannual Indicative Programmes (MIPs) are an important element of EU aid under the Development Cooperation Instrument (DCI). The DCI forms part of the budget of the EU.

On 19 March 2014 an agreement between the European Union and the OAS General Secretariat was signed.³⁰ According to this agreement, the EU has to provide EUR 1,000,000 over two years to the project ‘Supporting and Strengthening the Work of the Inter-American Human Rights System through the Promotion of the Rights of the Most Vulnerable and Excluded Groups and Communities in the Americas’, which is to be implemented by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.³¹

This financial contribution matches Program 4 of the Inter-American Commission of Human Rights³² and provides support to the strengthen the nine IACHR Rapporteurships and Thematic Units working on the promotion of full enjoyment and respect of the rights of the most vulnerable communities and groups that live in extreme poverty.³³

As it was noted, although the above is based on the cooperation between the EU and the OAS, it does not cover all the Americas, but Latin America only. As it was noted, ‘the EU’s relations with Latin

²⁹ EEAS/European Commission Directorate General for Development and Cooperation – Europeaid, ‘Development Cooperation Instrument 2014-2020, Multiannual indicative regional programme for Latin America’ (n 27).

³⁰ What is striking is that the text of the agreement is available neither in the eur-lex.eu database, nor in any other available source of legal instruments. The authors tried to obtain a copy of the agreement through individual petition to the EU institutions, but without success. They only have access to the Action Fiche of the EIDHR, available at: <www.eidhr.eu/files/dmfile/AAP2013.pdf>.

³¹ OAS Department of International Affairs, ‘European Union – profile’, <www.oas.org/en/ser/dia/perm_observers/Countries.asp>, p 2.

³² Program 4 encompasses: rights of indigenous people, rights of women, migratory worker and their families, rights of the child, rights of persons deprived of liberty, rights of afro-descendants and against racial discrimination and human rights defenders. See IACHR, ‘Strategic Plan 2011-2015’, <<https://www.oas.org/en/iachr/docs/pdf/IACHRStrategicPlan20112015.pdf>>.

³³ See IACHR, ‘Thematic Rapporteurships and Units’, <www.oas.org/en/iachr/mandate/rapporteurships.asp>. Other legal instrument currently binding or recently concluded between the EU and OAS are, for example: Working Arrangement between the EEAS and the OAS General Secretariat on Cooperation in the Field of Conflict Analysis, Early Warning and Crisis Response (signed 23 September 2014); Agreement between the European Union and the OAS General Secretariat, signed on 22 April 2013 for an amount of USD 1,500,000 to support the action entitled: Confidence building and risk mitigation in the process of Land Restitution in Colombia within the Program Mission to support the Peace Process in Colombia (MAPP); Contribution Agreement between the OAS General Secretariat and the European Union on December 3, 2012 for the implementation of the Action entitled: Guatemala-Belize, support to the peaceful resolution of the long-standing territorial dispute; Development of the Americas Digital Media with the technical support and knowledge transfer of the Joint Research Center of the European Union Commission.

American countries have developed at the bi-regional level (European Union - Latin America), and a number of specialised dialogues within this broader relationship are ongoing with specific sub-regions (MERCOSUR, the Andean Community and Central America), and between the EU and specific countries (Mexico and Chile).³⁴

Apart from the relationship with Latin America, the relationship between the EU and Canada and the United States of America cannot be forgotten. Both, Canada and the United States of America are member states of the OAS. In this context, bilateral relations are of crucial importance.

The EU relations with MERCOSUR are based on 'Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part – Joint Declaration on political dialogue between the European Union and Mercosur'.³⁵ Article 1 describes the basis for cooperation in the following manner: '[r]espect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights inspires the domestic and external policies of the Parties and constitutes an essential element of this Agreement.'

³⁴ European Commission, 'EU's external assistance to Latin America, 2000-2003', press release, MEMO/04/120, 25 May 2004, <http://europa.eu/rapid/press-release_MEMO-04-120_en.htm?locale=en>. See also: European Commission, 'Commission approves co-operation actions for EUR 246 million in Latin America', press release, IP/04/63, 16 January 2004, <http://europa.eu/rapid/press-release_IP-04-63_en.htm?locale=FR>; and: Michael Krakowski, 'The Relations between the European Union and Latin America and the Caribbean: Current State and Perspectives' (2008) 43 *Intereconomics* 112.

³⁵ Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part – Joint Declaration on political dialogue between the European Union and Mercosur [1996] OJ L69/4, [1999] OJ L112/66.

III. Institutional framework of the EU-OAS relations

A. Mapping the OAS: Bodies entrusted with human rights protection

The OAS protects and reinforces human rights in the American continent through a range of different institutions. The OAS' specialised human rights institutions are the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR), both part of the Inter-American Human Rights System (IASHR).³⁶ The relationship between both institutions is characterized by complementarity and independence. On the one hand the IACHR works as a preliminary, quasi-judicial body that selects the most serious and important cases concerning human rights in order to present them to the IACtHR, which is the judicial organ of the IASHR (complementarity).³⁷ On the other hand both institutions act in an independent way because (i) not all cases processed and resolved with reports by the IACHR reach the IACtHR, and (ii) because the IACtHR has two functions not related to the work of the IACHR: it directly receives cases from the member states and performs an advisory function.

Besides the IACHR and the IACtHR, which are the main organs of the IASHR, there is a variety of subsidiary OAS institutions dealing with human rights issues. They will be analysed in the second part of this chapter.

1. The Inter-American Human Rights System

According to the Charter of the Organization of the American States (OAS Charter),³⁸ the institutions in charge of protecting and enforcing human rights are the IACHR and the IACtHR.³⁹

a) The Inter-American Commission on Human Rights

According to Art. 106 of the OAS Charter, it is the IACHR's role 'to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters'.

(1) Composition and sessions

The IACHR is composed of seven Commissioners who are elected by the OAS General Assembly (OAS GA) from a list of candidates proposed by the member states.⁴⁰ They are elected for a period of four years and can be re-elected only once.⁴¹ From among them a Chairman, a First Vice-Chairman and a

³⁶ For detailed information on the IASHR see David J Harris and Stephen Livingstone (eds) *The Inter-American system of human rights* (Clarendon 1998). For a historical overview see Robert K. Goldman, 'History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights' (2009) 31 *Human Rights Quarterly* 856.

³⁷ On the difficult relationship between the IACHR and the IACtHR in the early stages see Cecilia Medina, 'The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights: Reflections on a Joint Venture' (1990) 12 *Human Rights Quarterly* 439, 448 et seq.

³⁸ Charter of the Organization of American States (adopted 30 April 1948, entered into force 13 December 1951, amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993), <www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.pdf>.

³⁹ For an overview of the institutional work, procedure and governing bodies of the IASHR, see Monika Mayrhofer, Carmela Chavez, Venkatachala Hegde, Magnus Killander, Joris Larik, Bright Nkrumah, Elizabeth Salmón, Kristine Yigen, 'Report on the mapping study on relevant actors in human rights protection', FRAME Deliverable 4.1, 31 January 2014, <www.fp7-frame.eu/wp-content/materiale/reports/02-Deliverable-4.1.pdf>.

⁴⁰ OAS Charter art 2(1) and 3.

⁴¹ OAS Charter art 6.

Second Vice-Chairman are elected by absolute majority of the Commissioners.⁴² In addition, the IACHR is supported by a Secretariat under the direction of an Executive Secretary and two Assistant Executive-Secretaries.⁴³

The Commission is divided into thematic and country rapporteurships (table 1).⁴⁴ Each of the Commissioners is in charge of one or two thematic rapporteurships and a few country rapporteurships. The thematic rapporteurships relate to human rights defenders, the rights of children, the rights of women and the rights of lesbian, gay, bisexual, trans- and intersex (LGBTI) persons, Afro-descendants and the rights of Indigenous Peoples, the rights of migrants, economic, social and cultural rights, rights of persons deprived of liberty, and freedom of expression.⁴⁵

Table 1: IACHR country and thematic rapporteurships

Commissioner/Special Rapporteur	Country Rapporteurship	Thematic Rapporteurship
José de Jesús Orozco Henríquez	Antigua and Barbuda, Colombia, Costa Rica, Grenada, Panama and Saint Kitts and Nevis	Human rights defenders
Rosa María Ortiz	Belize, Dominica, El Salvador, Dominican Republic, Saint Vincent and the Grenadines and Saint Lucia	Rights of children
Tracy Robinson	Bahamas, Honduras, Nicaragua, Suriname	Rights of women Rights of lesbian, gay, bisexual, trans- and intersex (LGBTI) persons
Rose-Marie Belle Antoine	Canada, Chile, Ecuador, Haiti and Jamaica	Rights of Afro-descendants Rights of indigenous peoples
James L. Cavallaro	Barbados, Guatemala, Guyana, Mexico, Peru and Trinidad and Tobago	Rights of persons deprived of liberty
Felipe González	Brazil, Cuba, United States and Venezuela	Rights of migrants
Paulo Vannuchi	Argentina, Bolivia, Paraguay and Uruguay	Economic, social and cultural rights
Edison Lanza (Special Rapporteur)		Freedom of expression

The IACHR holds ordinary sessions (two per year) and extraordinary sessions (as many as it may consider) in its institutional headquarters in Washington, D.C., or in an OAS member state.⁴⁶

⁴² OAS Charter art 14(1).

⁴³ OAS Charter art 21.

⁴⁴ Rules of Procedure of the Inter-American Commission on Human Rights (adopted 28 October-13 November 2009, current version in force since 1 August 2013) (IACHR Rules of procedure) art 15.

⁴⁵ For more detailed information on the individual rapporteurships see IACHR, 'Thematic Rapporteurships and Units', <www.oas.org/en/iachr/mandate/rappoteurships.asp>.

⁴⁶ OAS, 'Statute of the Inter-American Commission on Human Rights' General Assembly Res AG/Res 447 (La Paz, October 1979) (IACHR Statute) art 16.

(2) Role and competences

Art. 1(1) of the IACHR Statute provides that the Commission was created 'to promote the observance and defense of human rights'. In order to fulfil this mandate the IACHR has a wide array of tools and methods at its disposal. They include, most importantly, the monitoring of OAS member states through general instruments comprising thematic reports, state reports and on-site observation. According to Art. 18 IACHR Statute the IACHR has the following general competences:

- a. to raise awareness for human rights;
- b. to make recommendations to the governments of the states on the adoption of measures in favour of human rights;
- c. to prepare studies or reports;
- d. to request state reports;
- e. to respond to inquiries made by a member state through the General Secretariat of the OAS on matters related to human rights in that state and to provide advisory services;
- f. to submit an annual report to the OAS GA;
- g. to conduct on-site observations;
- h. to submit the program-budget of the Commission to the Secretary General.⁴⁷

These powers of the IACHR are general, since they are not connected to specific cases of human rights violations.

Another aspect of the mandate of the IACHR is the power to receive individual petitions or communications from states and to resolve them by issuing a final report with recommendations. In principle, the IACHR examines the petitions in the order they were submitted, however there are some exceptions. Art. 29 of the Rules of Procedure of the IACHR indicates that petitions may be expedited if:

- a. the case is time-sensitive (e.g. if the alleged victim is an older person, a child or terminally ill, if the alleged victim could be subjected to the death penalty or if the petition refers to a precautionary or provisional measure);
- b. the alleged victims are persons deprived of liberty;
- c. the OAS member state formally expresses its willingness to enter into a friendly settlement process;
- d. the issue has broader implications with potential relevance for multiple petitions, mainly if the decision could address either serious structural human rights deficiencies or could promote changes in legislation and state practice.⁴⁸

After receiving a petition or communication, the IACHR must assess its competence and the admissibility. The criteria to be met are:

- a. **Ratione personae:** Any person, group of persons or NGOs legally recognized in one or more of the OAS member states are allowed to present petitions to the IACHR. The petition can be on their behalf or on behalf of third persons.⁴⁹
Interstate communications can be presented by all states parties to the American Convention on Human Rights (ACHR) that have accepted the competence of the IACHR

⁴⁷ IACHR Statute art 18.

⁴⁸ IACHR Rules of procedure art 29.

⁴⁹ IACHR Rules of Procedure art 23.

to receive and examine such communications. The communication has to be presented against other states parties to the ACHR. If the state party in question has not accepted the competence of the IACHR, it may exercise its option under Art. 45(3) ACHR⁵⁰ to recognize the competence of the IACHR only for the specific case of the communication.⁵¹

Finally, the IACHR can also initiate the processing of a petition *motu proprio*.⁵²

- b. **Ratione materiae:** The petition or communication presented to the IACHR has to concern a violation of a human right recognized in one of the following legal instruments: the American Declaration of the Rights and Duties of Man, the ACHR, the Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador'), the ACHR Protocol to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ('Convention of Belém do Pará'), in accordance with Art. 12 of the treaty,⁵³ the IACHR Statute, and the IACHR Rules of Procedure.⁵⁴
- c. **Ratione temporis:** The IACHR is competent to analyze the petitions and communications against a state when the human rights violations alleged occurred after the entry into force in that state of the correspondent legal instrument. Furthermore, the petition or communication must be presented within six months after the interested subject was notified of the decision that exhausted the domestic remedies.⁵⁵
- d. **Ratione loci:** Finally, to be admissible, the petition or communication must refer to a human rights violation that occurred in the jurisdiction of the denounced State.
- e. **No duplication of procedures:** The IACHR will not consider a petition if the matter of the request is pending before another international governmental organization of which the petitioning state is a member, or if it substantially reproduces another

⁵⁰ American Convention on Human Rights ('Pact of San Jose', adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No 36 (ACHR) art 45: '1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention. 2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration. 3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case. 4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization'.

⁵¹ IACHR Rules of procedure art 50.

⁵² IACHR Rules of procedure art 24.

⁵³ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ('Convention of Belém do Pará', adopted 9 June 1994, entered into force 5 March 1995) art 12: 'Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions'.

⁵⁴ IACHR Rules of procedure art 23.

⁵⁵ For exceptions to the requirement of the exhaustion of domestic remedies, see IACHR Rules of procedure art 31.

petition pending or already examined and settled by the IACHR or by another international governmental organization of which the petitioning state is a member.⁵⁶

It is important to note that, in relation to the *ratione materiae* criteria, the IACHR may also receive and process cases of violations of the American Declaration involving countries which are not parties to the ACHR.⁵⁷ Regarding these states the IACHR has the competences provided for in Art. 18 and 20 IACHR Statute.⁵⁸ It can receive individual petitions or interstate communications, which are resolved by applying the American Declaration of the Rights and Duties of Man. The applicable procedure is provided for in Art. 51 and 52 of the IACHR's Rules of Procedure:

The Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man in relation to the Member States of the Organization that are not parties to the American Convention on Human Rights [...].⁵⁹

Further, the IACHR Statute points out that the IACHR was created to promote the defense of human rights, which are understood as the rights set forth in the ACHR, in relation to its states parties, and the rights set forth in the American Declaration, in relation to OAS member states.⁶⁰ In addition, the IACTHR held in Advisory Opinion OC-10/89 that the OAS member states have accepted that the American Declaration contains human rights obligation that must be fulfilled.⁶¹

In this sense, it is possible to conclude that (i) OAS member states are bound by the American Declaration and that (ii) the IACHR is competent to hear petitions and communications concerning violations of human rights contained in the American Declaration – a competence which is recognized in binding instruments. Although this possibility is not recognized in other human rights systems, e.g. at the European or global level, it allows for more effective and comprehensive human rights protection in Latin America.⁶²

⁵⁶ The analysis of the admissibility must be done according to the procedure described in art 30 to 36 of the IACHR Rules of procedure.

⁵⁷ This is the case for Antigua and Barbuda, Bahamas, Belize, Canada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and the United States of America. The United States signed the ACHR on 1 June 1977 but did not ratify it.

⁵⁸ IACHR Statute art 20: 'In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18: a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man; b. to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and, c. to verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted'.

⁵⁹ IACHR Rules of procedure art 51.

⁶⁰ IACHR Statute art 1.

⁶¹ *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, Inter-American Court of Human Rights Series A No 10 (14 July 1989) para 42.

⁶² Héctor Faúndez Ledesma, *El Sistema Interamericano de Protección de los Derechos Humanos. Aspectos institucionales y procesales* (3rd ed, Instituto Interamericano de Derechos Humanos 2004) 266.

The process before the IACHR then continues with the procedure on the merits including the consideration of additional information, conducting a hearing and in some cases an on-site investigation. After that, '[...] if the parties cannot reach a friendly settlement, the IACHR publishes a report with recommendations to the State including a timeframe for implementation [...]'.⁶³ The reports of the IACHR are not binding, but the IACHR still monitors its compliance in a regular way. In addition, non-compliance with the recommendations made in the report allows the IACHR to present a case before the IACtHR if the respective state has accepted the jurisdiction of the Court. The IACHR has some selection criteria to decide if it brings a case before the IACtHR. These criteria include: the interest of the petitioner in the submission of the case, 'the nature and seriousness of the violation; the need to develop or clarify the case-law of the system; and the future effect of the decision within the legal systems of the Member States'.⁶⁴

Finally, according to Art. 25 of the IACHR's Rules of Procedure, the IACHR can order states to adopt precautionary measures in cases of grave and urgent situations to prevent irreparable human rights violations. The IACHR can adopt such measures on its own initiative or at the request of an involved individual.

b) The Inter-American Court of Human Rights

The IACtHR is the judicial branch of the IASHR. According to Art. 1 IACtHR Statute,⁶⁵ it is 'an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights'.⁶⁶

(1) Composition and sessions

The IACtHR is composed of

seven judges, nationals of the member states of the OAS, elected in an individual capacity from among jurists of the highest moral authority and of recognised competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions under the law of the State of which they are nationals or of the State that proposes them as candidates.⁶⁷

Additionally, Art. 5 IACtHR Statute indicates that 'the judges of the Court shall be elected for a term of six years and may be re-elected only once. A judge elected to replace a judge whose term has not expired shall complete that term'.

The IACtHR has a President, a Vice-President, a Secretary and an Assistant Secretary.⁶⁸ According to Art. 3 IACtHR Statute, 'the seat of the Court shall be San José, Costa Rica; however, the Court may convene in any member state of the OAS when a majority of the Court considers it desirable, and with

⁶³ Mayrhofer and others (n 39) 33.

⁶⁴ IACHR Rules of procedure art 45.

⁶⁵ OAS, 'Statute of the Inter-American Court of Human Rights' General Assembly Res AG/Res 448 (La Paz, October 1979) (IACtHR Statute).

⁶⁶ For detailed information about the procedure and case law of the IACtHR see eg Jo M Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (2nd ed, CUP 2013); Laurence Burgorgue-Larsen and Amaya Ubeda de Torres, *The Inter-American Court of Human Rights: Case Law and Commentary* (OUP 2011).

⁶⁷ IACtHR Statute art 4.

⁶⁸ IACtHR Statute art 12-14.

the prior consent of the State concerned'. In that sense, the Court holds regular and special sessions in San José (Costa Rica) and in other OAS member states.⁶⁹

(2) Role and jurisdiction

Similar to the IACHR, the role of the IACtHR varies depending on the situation of the state in the IASHR. Not all OAS member states have accepted the jurisdiction of the IACtHR. Thus, the IACtHR has jurisdiction only over states which not only signed and ratified the ACHR, but also accepted the jurisdiction of the IACtHR according to the procedure described in Art. 60 ACHR:

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.⁷⁰

In the *Velazquez-Rodriguez* case, the IACtHR affirmed the scope of its jurisdiction and competence:

[...] the Court, in the exercise of its contentious jurisdiction, is competent to decide 'all matters relating to the interpretation or application of (the) Convention' [...] The broad terms employed by the Convention show that the Court exercises full jurisdiction over all issues relevant to a particular case. The Court, therefore, is competent to determine whether there has been a violation of the rights and freedoms recognized by the Convention and to adopt appropriate measures. The Court is likewise empowered to interpret the procedural rules that justify its hearing and to verify compliance with all procedural norms involved in the 'interpretation or application of (the) Convention'. In exercising these powers, the Court is not bound by what the Commission may have previously decided; rather, its authority to render judgment is in no way restricted. The Court does not act as a court of review, of appeal or other similar court in its dealings with the Commission. Its power to examine and review all actions and decisions of the Commission derives from its character as sole judicial organ in matters concerning the Convention. This not only affords greater protection to the human

⁶⁹ For regular sessions, see Rules of Procedure of the Inter-American Court of Human Rights (adopted 16-25 November 2000, partially amended 19-31 January 2009) (IACtHR Rules of procedure) art 11: 'the Court shall hold the regular periods of sessions necessary for the exercise of its functions on the dates decided by the Court during the previous regular session. In exceptional circumstances, the Presidency may, in consultation with the other Judges, change the dates of the sessions'. For special sessions see IACtHR Rules of procedure art 12: 'Extraordinary sessions may be convened by the Presidency on his or her own initiative or at the request of a majority of the Judges'. For session in OAS Member States, see IACtHR Rules of procedure art 13: 'the Court may convene in any Member State when a majority of the Court considers it desirable, with the prior consent of the State concerned'.

⁷⁰ ACHR art 60.

rights guaranteed by the Convention, but it also assures the States Parties that have accepted the jurisdiction of the Court that the provisions of the Convention will be strictly observed [...].⁷¹

Based on this approach, the IACtHR should be considered as an independent judicial organ, whose task is to protect human rights in the American continent. It is also important to note that the IACtHR can receive cases directly from the states, in addition to those presented by the IACHR.⁷² The Court can adopt provisional measures to avoid irreparable damage to persons in cases of extreme gravity and urgency.⁷³ In addition, the IACtHR issues advisory opinions. Art. 64 ACHR provides that:

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.⁷⁴

This scope of activity of the IACtHR covers all OAS member states, including those who did not recognise the jurisdiction of the IACtHR and/or did not ratify the ACHR. The possibility of applying the advisory jurisdiction also in those states that have not ratified the ACHR grants the IACtHR broad power. It has been described by the IACtHR in the following way:

Article 64 of the Convention confers on this Court an advisory jurisdiction that is more extensive than that enjoyed by any international tribunal in existence today. All the organs of the OAS listed in Chapter X of the Charter of the Organization and every OAS Member State, whether a party to the Convention or not, are empowered to seek advisory opinions. The Court's advisory jurisdiction is not limited only to the Convention, but extends to other treaties concerning the protection of human rights in the American States. In principle, no part or aspect of these instruments is excluded from the scope of its advisory jurisdiction. Finally, all OAS Member States have the right to request advisory opinions on the compatibility of any of their domestic laws with the aforementioned international instruments.⁷⁵

Finally, besides the advisory opinions, the IACtHR jurisprudence also affects the legal practice of the states that are OAS members, but did not accept the jurisdiction of the IACtHR. This takes place through the use of the IACtHR jurisprudence in the reports of the IACHR. In recent years, the IACHR has invoked the jurisprudence of the IACtHR as a guideline for interpretation of the ACHR, the obligations that derive from it and the provisions of other human rights treaties. Thus, one can find

⁷¹ *Velasquez Rodriguez v. Honduras* (Preliminary Objections Judgment) Inter-American Court of Human Rights Series C No 1 (26 June 1987) para 29.

⁷² ACHR art 61(1).

⁷³ ACHR art 63(2).

⁷⁴ ACHR art 64.

⁷⁵ 'Other Treaties' Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82, Inter-American Court of Human Rights Series A No 1 (24 September 1982).

references to IACtHR rulings also in the reports on the situation of human rights in states that have not accepted the jurisdiction of the IACtHR.

This is possible because, even though classic public international law requires that norms created by sovereign states can be expanded or restricted only by them, modern international law recognizes the special character of human rights: its autonomous character and evolving nature may sometimes separate it from the will of the states.⁷⁶ In that sense, it has been held that the establishment of *erga omnes* and *jus cogens* obligations represents the overcoming of the voluntarist pattern in international law and that international human rights law requires and promotes the transformation of the law of treaties in favor of greater protection of citizens.⁷⁷ As a consequence of this approach, the IACtHR justifies the widespread use of its case law in relation to states that have not accepted its binding jurisdiction. Finally, the IACtHR also argues that both, the ACHR and the American Declaration, are sources of international law and must therefore be interpreted in harmony. This argument authorizes the IACHR to use IACtHR cases when interpreting and applying the provisions of the American Declaration.

With this conception of human rights law in mind, it is possible to understand how the IACHR regularly refers to the IACtHR interpretations of the ACHR also in the reports of OAS member states that did not recognise jurisdiction of the IACtHR. For instance, in its report on immigration in the United States, the IACHR relied on the interpretation of the IACtHR in relation to the human rights that must inform the immigration policies of the OAS member states.⁷⁸ In its report on indigenous women in Canada the IACHR referred to the jurisprudence of the IACtHR about the due diligence response to human rights violations and the four obligations that it involves.⁷⁹

2. The subsidiary human rights bodies of the Organization of American States

In addition to the specialised human rights institutions of the OAS examined above, there are a range of other institutions, which deal with human rights issues within the framework of the OAS.

a) The OAS General Assembly

Art. 1 OAS Charter enshrines the position of the General Assembly as the supreme organ of the OAS. Among its principal powers are ‘to decide the general action and policy of the Organization, determine the structure and functions of its organs, and consider any matter relating to friendly relations among the American States’.⁸⁰ The OAS GA is the main political and diplomatic organ of the OAS. Among other functions, it is in charge of elaborating international norms that guide the OAS’ institutional work. For this reason, the OAS GA can be classified as another organ competent to foster human rights in the American region.

⁷⁶ Juan Antonio Carrillo Salcedo, ‘Derechos Humanos y Derecho Internacional’ (2000) 22 ISEGORÍA 69, <<http://isegoria.revistas.csic.es/index.php/isegoria/article/viewFile/522/522>>.

⁷⁷ *Blake v Guatemala* (Merits) Inter-American Court of Human Rights Series C No 36 (24 January 1998), separate opinion by judge Antônio Augusto Cançado Trindade, para 28-29.

⁷⁸ IACHR, ‘Report on Immigration in the United States: Detention and Due Process’, OEA/Ser.L/V/II. Doc. 78/10, 30 December 2010, para 32, <www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf>.

⁷⁹ IACHR, ‘Missing and Murdered Indigenous Women in British Columbia: Canada’, OEA/Ser.L/V/II.Doc. 30/14, 21 December 2014, para 153, <www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>.

⁸⁰ OAS Charter art 1.

b) The Inter-American Council for the Integral Development

The Inter-American Council for the Integral Development (CIDI) promotes cooperation among member states for integral development in order to reduce poverty, and it is directly answerable to the OAS GA.⁸¹ According to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador'), the states party to this protocol shall send the progress reports of its implementation and effectiveness to the Inter-American Economic and Social Council and to the Inter-American Council for Education, Science and Culture. Since these two institutions were replaced by the CIDI, all reports shall be sent to the CIDI.

c) The Inter-American Commission of Women

The Inter-American Commission of Women is a specialised organisation of the OAS.⁸² It is 'an intergovernmental organization established by multilateral agreement and having specific functions with respect to technical matters of common interest to the American States'.⁸³ It has the responsibility to monitor the implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and to request information from the IACtHR for the interpretation of the said convention.⁸⁴ Finally, the Commission presents annual reports to the OAS GA and makes general recommendations to the OAS member states regarding the status of women's human rights in the region.

d) The Committee for the Elimination of All Forms of Discrimination Against Persons with Disabilities

According to the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities,⁸⁵ the Committee for the Elimination of All Forms of Discrimination Against Persons with Disabilities is the organ responsible for gathering information from member states regarding the implementation process and effective application of this convention. In such a way, it has the possibility to obtain key human rights information and to coordinate possible solutions based on it.

e) The Inter-American Indian Institute

The Inter-American Indian Institute was created by the 1940 *Pátzcuaro* International Convention. The objectives of the Inter-American Indian Institute are to assist coordination of Indian affairs policies of the member states and to promote research and training of individuals engaged in the development of indigenous communities. The Institute has its headquarters in Mexico City. Thus, the Indian Institute is the governing body leading with its institutional implementation and, nowadays, its main

⁸¹ For more information about the CIDI see <www.oas.org/en/cidi/about.asp>.

⁸² For more information about the Inter-American Commission of Women see <www.oas.org/en/cim>.

⁸³ OAS Charter art 124.

⁸⁴ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ('Convention of Belém do Pará') art 11: 'The States Parties to this Convention and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights advisory opinions on the interpretation of this Convention'.

⁸⁵ Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (adopted 8 June 1999, entered into force 14 September 2001).

responsibility is to provide information in order to fight against discrimination.⁸⁶ However, its activities have been declining and its closure is currently under discussion.

B. Mapping the EU: Major EU Human Rights Stakeholders involved directly or indirectly in cooperation with the OAS

The following section will map the major stakeholders in the EU which are involved directly or indirectly/in theory or practice in cooperation with the OAS.⁸⁷ More in-depth analyses of the competences and the work of the various actors will follow in the subsequent chapters of this report.

The European Council functions as the primary agenda setter and strategic body of the EU. According to Art. 26(1) TEU, it shall 'identify the Union's strategic interests, determine the objectives [...] and define general guidelines', and thus set the general political directions and priorities of EU foreign policy. So far, the European Council has only rarely addressed human rights issues,⁸⁸ and not explicitly provided guidance on the EU's cooperation with the OAS. However, it has underlined the Union's 'firmly-rooted belief in effective multilateralism' and highlighted the 'need for Europe to promote its interests and values more assertively'.⁸⁹

The Council of the European Union is mandated with policy-making, coordinating and legislative functions.⁹⁰ It meets in 10 different formations, depending on the policy area at hand. The Foreign Affairs Council 'shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent'.⁹¹ It is instrumental in the adoption of decisions concerning the EU's human rights priorities and strategies in its cooperation with the OAS.⁹² Most notably, on 25 June 2012 the Foreign Affairs Council adopted the EU Strategic Framework and Action Plan on Human Rights and Democracy, which provided strategic guidance for the Union's engagement with regional organisations, explicitly referring to the OAS.⁹³ Furthermore, since 2008, the Foreign Affairs Council has adopted a set of eleven Human Rights Guidelines, which stipulate the Union's priorities and strategies on a variety of human rights issues. The majority of these Guidelines contain explicit guidelines for EU cooperation with regional organisations in general and with the OAS in particular.⁹⁴

The Council is supported by a Secretariat, the Permanent Representatives Committee ('COREPER'), the Political and Security Committee ('PSC') and more than 150 specialised committees and working parties. COREPER is tasked with 'preparing the work of the Council', 'carrying out the tasks assigned

⁸⁶ OAS, 'Report of the Inter-American Indian Institute to the Special Committee on Inter-American Summits Management', OEA/Ser.G CE/GCI-9/95, 29 September 1995, <www.summit-americas.org/CEGCI%20Docs/CE-GCI-9-95-eng.htm>.

⁸⁷ For more detailed information on the various EU actors discussed in this chapter see Grażyna Baranowska, Anna-Luise Chané, David D'Hollander, Agata Hauser, Jakub Jaraczewski, Zdzisław Kędzia, Mariusz Lewicki, Anna Połczyńska, 'Report on the analysis and critical assessment of EU engagement in UN bodies', FRAME Deliverable 5.1, 30 November 2014, <www.fp7-frame.eu/wp-content/materiale/reports/13-Deliverable-5.1.pdf>, ch III.B.

⁸⁸ *ibid*, ch III.B.1.

⁸⁹ European Council, 'Conclusions', Doc No EUCO 21/1/10 REV 1, 16 September 2010, introduction and para 2.

⁹⁰ Consolidated Version of the Treaty on European Union [2008] OJ C115/13 (TEU) art 16(1).

⁹¹ TEU art 16(6).

⁹² See also *infra*, ch IV.

⁹³ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (n 1).

⁹⁴ See *infra* ch IV.

to it by the latter⁹⁵ and ‘ensur[ing] consistency of the European Union’s policies and actions’.⁹⁶ In its COREPER II formation (comprising the Permanent Representatives of the EU member states) it is responsible for examining all draft proposals before placing them on the agenda of the Council. The Political and Security Committee (PSC) is a permanent Council committee whose mandate includes monitoring the international situation within the area of the CFSP, contributing to policy making by delivering opinions to the Foreign Affairs Council, and monitoring the implementation of agreed policies.⁹⁷ It plays an important role in the policy development process of the EU as it discusses and endorses at ambassadorial level proposals originating from the working groups before forwarding them to the COREPER. The Council Working Party on Human Rights (COHOM) is a key actor in defining the EU’s human rights policy. It drafts EU strategic human rights documents and ensures outreach to internal and external stakeholders during the preparatory stages. As such it was, for example, responsible for drafting the EU Strategic Framework and Action Plan and most of the Union’s human rights guidelines.⁹⁸ Next to thematic working parties, the Council has also geographic working parties. The Council Working Party on Latin America (COLAT) deals with the Union’s relations with Latin American and Caribbean countries. It addresses a range of policy issues including the IASHR and human rights dialogues between the EU and Latin American states.⁹⁹ The Council Working Party on Transatlantic Relations (COTRA) is responsible for matters concerning the Union’s relations with the USA and Canada.

The EU High Representative for Foreign Affairs and Security Policy/Vice President of the Commission (HR/VP) conducts and contributes to the development of the Union’s CFSP.¹⁰⁰ She chairs the Foreign Affairs Council,¹⁰¹ represents the Union externally for matters relating to the CFSP,¹⁰² and organises the coordination of EU member states’ positions in international organisations and conferences.¹⁰³ The HR/VP meets with OAS representatives¹⁰⁴ and delivers statements relating to OAS matters. For

⁹⁵ Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/1 (TFEU) art 240(1).

⁹⁶ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure [2009] OJ L325/35, art 19(1).

⁹⁷ TEU art 38.

⁹⁸ Note for example that the EU Guidelines on promoting compliance with International Humanitarian Law (IHL) were update by the Council Working Party on Public International Law (COJUR).

⁹⁹ See for example the proposed agenda of the COLAT meeting on 30 April 2013 which lists the Inter-American Human Rights System as third agenda point, General Secretariat of the Council of the European Union, 26 April 2013, Doc No CM 2583/1/13 REV 1; or the draft agenda of the COLAT meeting on 11 September 2012, which lists the human rights dialogue with Brazil as the third agenda item, General Secretariat of the Council of the European Union, 6 September 2012, Doc No CM 4292/12.

¹⁰⁰ TEU art 18(2).

¹⁰¹ TEU art 18(3), 27(1).

¹⁰² TEU art 15(6), 27(2).

¹⁰³ TEU art 34(1).

¹⁰⁴ See for example her meeting with the OAS Secretary General on 28 January 2015 in the framework of the Summit of the Community of Latin American and Caribbean States (CELAC), OAS, ‘OAS Secretary General Met with Officials at the CELAC Summit’, 28 January 2015, <www.oas.org/en/media_center/photonews.asp?sCodigo=FNE-16808>.

example, in 2011 the HR/VP welcomed the readmission of Honduras to the OAS¹⁰⁵ and in 2010 she commended the IACtHR for its work on femicide.¹⁰⁶

The European External Action Service (EEAS) is responsible for supporting the HR/VP in fulfilling her mandate,¹⁰⁷ and for assisting ‘the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations’.¹⁰⁸ At headquarters level, the Directorate for Human Rights and Democracy is tasked with mainstreaming human rights in the work of the EEAS. In addition, the Directorate for the Americas is responsible for the EU’s relations with the American continent. On the ground it is the EU Delegation to the United States, which represents the Union vis-à-vis the OAS.¹⁰⁹ The Ambassador and Head of Delegation is simultaneously the Permanent Observer of the EU to the OAS. The Union’s role at the OAS is coordinated by the Political, Security and Development Section of the EU Delegation.¹¹⁰ OAS representatives and EEAS officials from both headquarters and delegation level have repeatedly met in the past years to discuss various issues of mutual concern.¹¹¹

The EU Special Representative for Human Rights (EUSR) has been appointed in 2012 in order to contribute to enhancing the visibility and effectiveness of the Union’s human rights policy.¹¹² His tasks include improving the coherence and mainstreaming of human rights in EU external action, as well as ‘enhanc[ing] dialogue with governments in third countries and international and regional

¹⁰⁵ Declaration by High Representative Catherine Ashton on behalf of the European Union on the readmission of Honduras to the Organisation of American States, 14 June 2011, Doc No 11082/3/11 REV 3, <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/122383.pdf>.

¹⁰⁶ Declaration by the High Representative Catherine Ashton on behalf of the European Union on Femicide, 30 June 2010, Doc No 11706/1/10 REV 1, <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/115578.pdf>.

¹⁰⁷ TEU art 27(3); Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30, art 2(1).

¹⁰⁸ *ibid* art 2(2).

¹⁰⁹ See also TEU art 221(1) which provides that ‘Union delegations in third countries and at international organisations shall represent the Union’.

¹¹⁰ EU Delegation to the United States, ‘Political, Security and Development Section’, <www.euintheus.org/who-we-are/meet-our-staff/political-security-and-development-psd-section/>.

¹¹¹ See for example the meeting of the OAS Secretary General and the Managing Director for the Americas of the EEAS in February 2011, OAS, ‘OAS Secretary General Meets with Managing Director for the Americas of the European External Action Service’, 28 February 2011, <www.oas.org/en/media_center/photonews.asp?sCodigo=FNE-4882> or the recent meeting of the OAS Secretary General and the Permanent Observer of the EU to the OAS in January 2015, OAS, ‘OAS Secretary General Receives Permanent Observer of the EU’, 7 January 2015, <www.oas.org/en/media_center/photonews.asp?sCodigo=FNE-16695>.

¹¹² Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights [2012] OJ L200/21; his mandate has been most recently renewed through Council Decision (CFSP) 2015/260 of 17 February 2015 extending the mandate of the European Union Special Representative for Human Rights [2015] OJ L43/29. For more information on the EUSR see also Dominik Toksdorf, ‘EU Special Representatives: An Intergovernmental Tool in the Post-Lisbon Foreign Policy System?’ (2013) 10 *European Foreign Affairs Review* 471; Jan Wouters, Laura Beke, Anna-Luise Chané, David D’Hollander and Kolja Raube, ‘A comparative study of the EU and US approaches to human rights in external relations’ (2014) EXPO/B/DROI/2013/27, 65 et seq.

organisations on human rights'.¹¹³ In line with his mandate, he has repeatedly met with OAS representatives or participated in OAS events.¹¹⁴

As the Union's executive body, the European Commission ensures and oversees the application of EU primary and secondary law.¹¹⁵ It actively engages in mainstreaming human rights across all policy areas¹¹⁶ and represents the Union externally in all areas that do not fall under the CFSP.¹¹⁷ In the Union's pre-Lisbon setting, the European Commission was responsible for signing the MoU with the OAS.

Finally, the European Parliament is considered to play 'a leading role in the promotion of human rights, in particular through its resolutions'.¹¹⁸ As the Council has stated in the Strategic Framework, the European Parliament's 'democratic mandate gives it particular authority and expertise in the field of human rights'. It has repeatedly adopted resolutions dealing with the human rights situation in the Americas and containing explicit references to the IASHR. In 2012, for example, it adopted a resolution on the possible withdrawal of Venezuela from the IACHR,¹¹⁹ and in 2014 it called on the President of Venezuela to 'to abide by the international treaties to which Venezuela is a party, in particular the Inter-American Democratic Charter'.¹²⁰ In addition, the Parliament's Subcommittee on Human Rights (DROI) has discussed on several occasions issues of relevance for the IASHR or invited representatives of the latter to participate in the Committee's meetings.¹²¹

¹¹³ Council Decision 2012/440/CFSP (n 112) art 3(c).

¹¹⁴ See for example the meeting of the EUSR with the OAS Secretary General in February 2014, OAS, 'OAS Secretary General Receives EU Special Representative for Human Rights', 27 February 2014, <www.oas.org/en/media_center/photonews.asp?sCodigo=FNE-13984> or his participation in the 61st OAS Policy Roundtable in October 2014, <www.oas.org/en/ser/dia/outreach/docs/61_Policy_Round_Table_Program.pdf>.

¹¹⁵ TEU art 17(1), 27(2).

¹¹⁶ For a detailed analysis of the human rights policy of the various Commission DGs, see Monika Mayrhofer, Katharina Häusler, Renata Bregaglio, Carmela Chavez, Tingting Dai, Felipe Gómez Isa, Venkatachala Hegde, Jakub Jaraczewski, Magnus Killander, Karin Lukas, María Nagore, Bright Nkrumah, Lingying Yin, 'Report on the global human rights protection governance system', FRAME Deliverable 4.2, forthcoming July 2015.

¹¹⁷ TEU art 17(1).

¹¹⁸ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (n 1) 9.

¹¹⁹ European Parliament resolution of 24 May 2012 on the possible withdrawal of Venezuela from the Inter-American Commission on Human Rights (2012/2653(RSP)) [2013] OJ C 264E/88. See also *infra*, ch IV.

¹²⁰ European Parliament resolution of 27 February 2014 on the situation in Venezuela (2014/2600(RSP)).

¹²¹ See for example the joint event of DROI and the European Parliament's Committee on Women's Rights and Gender Equality on femicide in Mexico and Central America, 10 October 2011, Doc No 15341/11, or the 2012 hearing on the Inter-American Human Rights Mechanism in which e.g. the Executive Secretary of the IACHR participated, 30 January 2012, Doc No 5902/12.

IV. Substantive goals and objectives of the EU with regard to the OAS in the field of human rights

The EU has identified human rights in general as a policy area on which it intends to cooperate with the OAS.¹²² The 2009 MoU between the EU and the OAS lists human rights among the areas in which both organisations seek to intensify their dialogue and cooperation. Similarly, the EU's 2012 Strategic Framework and Action Plan on Human Rights and Democracy includes the OAS as one of those regional organisations with which the EU seeks to 'work in partnership' and 'intensify dialogue [...] for the promotion of universal human rights standards'.¹²³

Apart from this general commitment to human rights promotion and protection, the EU's concrete goals and objectives with regard to its human rights cooperation with the OAS have been specified in few policy documents. The EU publishes no specific policy documents identifying certain thematic human rights issues or methods of cooperation in its bilateral relations with the OAS, although such documents can be found with respect to the EU's relationships with other international institutions, such as the United Nations (UN).¹²⁴ Nevertheless, the MoU, the EU's Human Rights Guidelines, its statements and concrete actions allow one to identify certain priorities and strategies.

The MoU was concluded by the European Commission and the OAS on 17 December 2009 with the aim of enhancing 'their dialogue and the effectiveness of their efforts to achieve their common goals and objectives in sectors of mutual interest'.¹²⁵ Not only does the MoU identify the promotion and protection of human rights as one of the areas for cooperation, but it also explicitly identifies freedom of expression, the promotion of ethnic and racial equality and the rights of the most vulnerable groups as thematic priorities.¹²⁶ This list is not meant to be exhaustive, but it gives an indication of those human rights issues on which the EU and the OAS might intend to focus on their cooperation. The MoU also specifies that these priority areas should be addressed through formal, regular bilateral consultative meetings, ongoing consultation and reciprocal sharing of information as well as through an exchange of experiences and best practices.¹²⁷

The EU's focus on vulnerable groups has also been illustrated by the recently concluded financing agreement 'Support and Strengthening of the Work of the Inter-American Human Rights System through the promotion and protection of the rights of the most vulnerable and excluded communities and groups in the Americas'.¹²⁸ Under this agreement, the EIDHR will contribute EUR 1 million to the IACHR and the IACTHR in order to support them in their efforts to promote and protect human rights of the most vulnerable and excluded groups and communities in the region through a closer interaction with national actors; through the development of case law and legal norms that will

¹²² For more detail see *supra*, ch II.

¹²³ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (n 1).

¹²⁴ See only Baranowska and others (n 87) 77 et seq.

¹²⁵ Memorandum of Understanding between the European Commission and the General Secretariat of the Organization of American States (n 4) para 3.

¹²⁶ *ibid* para 5(a).

¹²⁷ *ibid* para 6.

¹²⁸ OAS, 'OAS and European Union Sign Financing Agreement to Strengthen the Inter-American Human Rights System', press release, 22 March 2014, <www.oas.org/en/media_center/press_release.asp?sCodigo=E-102/14>.

influence member states policies and legislation; through increased knowledge and understanding of the Inter-American human rights system; and through improved access to the system for victims of human rights violations.¹²⁹

Similarly, in a statement on the occasion of the International Day of the World's Indigenous Peoples 2014 the EU declared that it 'raises the rights of indigenous peoples wherever relevant [...] in multilateral forums such as the [...] Organisation of American States'.¹³⁰

In addition, the Union's human rights priorities are expressed through the adoption of Human Rights Guidelines dealing with particular human rights or vulnerable groups. Since 2008, a set of eleven Guidelines has been adopted, addressing children's rights (2008) and children in armed conflict (2008), human rights defenders (2008), violence against women and girls and discrimination against them (2008), human rights dialogues (2009), compliance with international humanitarian law (2009), torture and other cruel, inhuman or degrading treatment or punishment (2012), the issue of the death penalty (2013), freedom of religion or belief (2013), LGBTI rights (2013) and most recently freedom of expression online and offline (2014). The majority of these guidelines contain explicit priorities for EU cooperation with regional organisations in general or with the OAS in particular.

This engagement can take a number of forms. Most prominent is the commitment of the EU to raise particular human rights issues in the political dialogues with regional organisations.¹³¹ The EU Guidelines on Torture, for example, provide that the 'human rights component of the political dialogue between the EU and [...] regional organisations shall include the issue of torture and other ill-treatment'. Similar provisions can be found in the EU Human Rights Guidelines on children's rights, children and armed conflict, LGBTI rights, violence against women, HRDs and freedom of religion or belief.

Secondly, most guidelines commit the EU to contribute to the strengthening and implementation of existing regional safeguards on the above-mentioned human rights issues, and to promote the creation of those safeguards wherever they do not yet exist. Examples of provisions containing such contribution can be found in the EU Human Rights Guidelines on torture, death penalty, freedom of opinion and expression, violence against women, HRDs and children's rights.¹³² A number of human rights guidelines explicitly refer to OAS instruments and institutions. For instance, the Guidelines on Freedom of Opinion and Expression commit the EU to 'encourage partner countries to ratify and implement relevant [...] regional human rights instruments' and to cooperate closely with special rapporteurs from regional organisations, referring explicitly to Art. 13 ACHR and to the OAS Special Rapporteur on Freedom of Expression. The European Parliament has adopted several resolutions on the situation in Venezuela, in which it encouraged the state to abide by the international treaties adopted in the framework of the OAS. For instance the resolution of 24 May 2012 on the possible withdrawal of Venezuela from the IACHR, in which the European Parliament encouraged 'the

¹²⁹ EIDHR, 'Annual Action Programme 2013' (n 6) action fiche 9.

¹³⁰ EU Delegation to the United Nations – New York, 'Statement by the Spokesperson on the occasion of the International Day of the World's Indigenous Peoples, 9 August 2014', <http://eu-un.europa.eu/articles/en/article_15358_en.htm>.

¹³¹ EU Human Rights Guidelines on torture, children and armed conflict, LGBTI rights, violence against women, human rights defenders, freedom of Religion and children's rights.

¹³² EU Human Rights Guidelines on torture, death penalty, freedom of opinion and expression, violence against women, human rights defenders and children's rights.

Government of Venezuela and all other states in the region to recognise and implement the IACHR's decisions and recommendations' and invited 'those countries which have not yet acceded to the Inter-American System of Human Rights to do so swiftly and to participate in it fully'.¹³³

The guidelines on the death penalty equally single out the OAS as a partner organisation, stating that the 'EU monitors closely and encourages measures and initiatives taken by other regional organisations inter alia [...] the Organisation of American States, who work towards the abolition of the death penalty'. In line with this commitment the EU Delegation to the United States delivered a statement at the OAS Permanent Council meeting of 15 January 2014, in which it expressed its concern 'about the continued use of the death penalty in the Western Hemisphere' and supported 'any suggestions to include a debate on the use of the death penalty [...] in this organization's work in the very near future'.¹³⁴

Regional organisations such as the OAS are also considered as a source of information in the guidelines on LGBTI rights and on children's rights. Finally, guidelines call upon the EU to cooperate with regional organisations to promote certain human rights issues, for example, through joint statements.¹³⁵

Furthermore, specific agreements between the EU and the OAS or its member states and concrete actions of EU also allow to identify priorities in EU external policy towards OAS. For example, the European Union Contribution Agreement signed on 21 June 2011 to support the implementation of the OAS/CARICOM Joint Electoral Observation Mission of Haiti Presidential and Parliamentary Elections or the EU Election Observation Missions (EU EOMs) in Nicaragua (1996, 2001, 2006, 2010, 2011), Paraguay (1998, 2013), Peru (2001, 2011), Ecuador (2002, 2007, 2008, 2009), Guatemala (2003, 2007), Venezuela (2005, 2006), Mexico (2006), Haiti (2006), Bolivia (2006), El Salvador (2009, 2012), Bolivia (2009), Honduras (2013), clearly demonstrate how democracy and strengthening of political rights are a central theme in the EU foreign policy towards the Americas. The strengthening of democracy has a direct impact on human rights because, as Inter-American Democratic Charter indicates, 'Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments'.¹³⁶

The strategy development process of EU external human rights activity spans four consecutive stages.¹³⁷ In a first step, COHOM is responsible for drafting the policy document and gathering internal and external input. Internally, COHOM cooperates *inter alia* with other Council working parties, the EEAS, the European Commission, the European Parliament, the Special Representative for Human Rights and with EU delegations. Externally, COHOM reaches out to other international organisations, HRDs and civil society. The draft proposal is then sent to the PSC for discussion and endorsement at ambassadorial level. Subsequently, the draft proposal is forwarded to the Permanent Representatives

¹³³ European Parliament resolution of 24 May 2012 on the possible withdrawal of Venezuela from the Inter-American Commission on Human Rights (n 119).

¹³⁴ EU Delegation to the United States of America, 'Statement to be read at the OAS Permanent Council meeting of 15 January 2014', 15 January 2014, <www.scm.oas.org/pdfs/2014/CP32178T.pdf>.

¹³⁵ EU Human Rights Guidelines on freedom of religion and compliance with international humanitarian law.

¹³⁶ OAS, 'Inter-American Democratic Charter' General Assembly OEA/Ser. P/AG/RES. 1 (XXVIII-E/0) (Lima, 11 September 2001) art 7.

¹³⁷ This paragraph is a brief summary of Baranowska and others (n 87) ch IV.B.

Committee (COREPER II) for inclusion in the agenda of the Foreign Affairs Council, by which it is finally adopted.

V. Tools/methods employed by the EU for cooperation with the OAS

A. Tools and politics

The tools and methods employed by the EU in its human rights cooperation with the OAS can be grouped into two broader categories. The first consists of the political dialogue on human rights that the EU has set up with OAS counterparts. This political dialogue may also serve to address respect for human rights and democracy in other policy areas like development cooperation or trade. The second category consists of the EU's thematic approaches on the basis of the financial aid received by the OAS. These two branches are operated by the EEAS, specifically by the EU Delegations in the OAS member states, and the Permanent Observer of the EU to the OAS. It is necessary to note that the thematic approaches are developed in terms of political dialogue, but above all, through the provision of funds to the various institutions of the IASHR.¹³⁸

1. The EU's political approach

The first tool that the EU employs in order to cooperate with the OAS and its member states on human rights issues is political dialogue. Political dialogue consists of diplomatic and political discussions between the EU and representatives of the OAS, the different member states and regional organisations like the Andean Community. These discussions are held alternately in Europe and Latin America (one political dialogue in Europe, one in Latin America) and are focused on the strengthening of the cooperation between the EU and the OAS on human rights and democracy. These are formal dialogues established as a consequence of the cooperation processes that started with the signature of the MoU. They bring together OAS and EEAS representatives. The OAS has in the past been represented by its Secretary General or Assistant Secretary General, the EEAS has been represented by its Secretary General or its Managing Director for the Americas.

The MoU identifies the political dialogue as one of the main areas of work between the EU and the OAS. It highlights the need to '[d]evelop formal, regular (at least once a year) bilateral consultative meetings, where discussion will take place on policy matters of common interest'.¹³⁹ The first OAS-EU Policy Dialogue in the framework of the MoU was held on 27 February 2012 at the EU Headquarters in Brussels, to advance political dialogue and develop concrete initiatives for joint EU-OAS cooperation in Latin America and the Caribbean (LAC). The meeting was centred on the situation and challenges in the areas of strengthening democratic institutions and promoting and defending human rights in the LAC region, as well as other matters, including the XLII General Assembly and the next OAS-EU Policy Dialogue.

The second OAS-EU Policy Dialogue within the framework of the MoU was held on 21 March 2013 at the OAS Headquarters in Washington D.C. On this occasion, the discussion was centred on topics of security, political issues and human rights in the hemisphere. In addition, a Colloquium between political advisers from the European Delegations in the Americas and the General Secretary accompanied by officials of the OAS was held on the same date. Civil society is also involved in the

¹³⁸ See ch V.B for a detailed analysis.

¹³⁹ Memorandum of Understanding between the European Commission and the General Secretariat of the Organization of American States (n 4) art 6(a).

dialogues through consultation and seminars organised during the year to directly feed the discussion in the official dialogues.

Art. 6 MoU also refers to the political dialogues between EU and political representatives of Latin American and Caribbean states. These political dialogues, known as EU-LAC Summit, have been held every two years since 1999 and aim to develop bi-regional cooperation on different topics including human rights and democracy.

In 2005, the European Commission communicated to the Council and the European Parliament a series of recommendations to strengthen the partnership between the EU and Latin America. On political dialogue, the Commission recommended

conducting a needs-based political dialogue with the appropriate partners at bi-regional, bilateral or sub-regional level, on carefully chosen topics; selecting a restricted number of topics; preparing political dialogue at meetings of senior officials; [and] regularly organising informal political dialogue meetings at senior official level with some countries on a needs basis.¹⁴⁰

As a consequence of this recommendation, EU-LAC Summits have since been dedicated to specific issue areas. For example, the 2015 summit has been held under the theme ‘Shaping our common future: working for prosperous, cohesive and sustainable societies for our citizens’.¹⁴¹

2. The EU’s thematic approach

The second method employed by the EU is the thematic approach that includes support for different thematic lines using specific cooperation agreements and financing tools. By this approach, the EU intends to enhance respect for human rights and fundamental freedoms and to strengthen the role of civil society in promoting these topics. This thematic approach is divided into two fields: the issues discussed by the EEAS and those related to the work of the Commission's Directorate-General for International Cooperation and Development (DG DEVCO).

With regard to the EEAS, the main topics of work are directly related to the EU Human Rights Guidelines and include topics like torture and ill-treatment, death penalty, discrimination, LGBTI rights, the rights of women, children, minorities and indigenous people, freedom of religion, freedom of opinion and expression, economic, social and cultural rights, the fight against impunity, and democracy through electoral observation missions. An example of this work is the current cooperation agreement between the EEAS and OAS General Secretariat: Working Arrangement between the EEAS and the OAS on Cooperation in the Field of Conflict Analysis, Early Warning and Crisis Response signed on 23 September 2014.

In addition, the work done in the different thematic lines includes participation of EU representatives in events organised by OAS institutions. For example, in July 2011 EU Delegates participated in the ‘Dialogue on the Protection of Human Rights Defenders’ held by the Rapporteurship of Human Rights

¹⁴⁰ European Commission, ‘Communication from the Commission to the Council and the European Parliament: A stronger partnership between the European Union and Latin America’, COM(2005)636 final, 8 December 2005, p 10.

¹⁴¹ For more information see ‘EU-CELAC summit, Brussels, 10-11/06/2015’, <<http://www.consilium.europa.eu/en/2015-eu-celac/>>.

Defenders,¹⁴² and in June 2012 in a conference on ‘Prevention of torture and cruel, inhuman or degrading treatment in Uruguay’.¹⁴³ Furthermore, OAS representatives have participated in events organised by EU institutions. For example in December 2013, the Executive Secretariat of the IACHR participated in the 15th EU-NGO Forum on Human Rights organised by the European Commission.¹⁴⁴ The participation in these events creates a constant dialogue on human rights between the EU and the OAS. Although this dialogue does not have a concrete (‘measurable’) result, it allows both organisations to discuss standards on human rights.

On the other hand, regarding the issues discussed by DG DEVCO, until 2013 the thematic lines include the following topics: migration and asylum, environment and sustainable management of natural resources, food security, investing in people and non-state actors and local authorities. These themes correspond to the thematic programmes implemented during the 2007-2013 multi-annual financial period. Since 2014, the thematic programmes were reduced and cover two areas: i) global goods and challenges, and ii) non-state actors and local authorities. The first theme covers topics such as human rights, where projects are promoted in the various areas related to the EU Human Rights Guidelines like in the case of the EEAS.

B. Financing

The work of both EU institutions – EEAS and DG DEVCO – in the thematic lines described above requires financial support. In the case of the OAS and its member states, financial support passes through two instruments: the European Instrument for Democracy and Human Rights (EIDHR), a thematic instrument related to the promotion of the rule of law, democracy and protection of human rights; and the Development Cooperation Instrument (DCI), a geographical instrument that provides financing for *inter alia* the Latin American region.

The EIDHR was created in 2006 to provide assistance to third countries in order to contribute to the development and consolidation of democracy and the rule of law, as well as the respect for all human rights and fundamental freedoms.¹⁴⁵ This assistance is concretised through (i) economic support for civil society organisations, human rights defenders and victims of repression and abuse, (ii) supporting and strengthening the international and regional framework for the protection, promotion and monitoring of human rights, in this case the OAS, and (iii) promoting electoral processes through the EU election observation missions. However, the main part of EU contributions are oriented towards civil society organisations. In that sense, the distribution of funding is 90% for civil society organisations and 10% for international organisations.¹⁴⁶

In the specific case of the OAS, the EU has provided funds since 1994. However, there is no publicly available information about the specific amounts of the contributions in the first years of

¹⁴² IACHR, ‘2011 Annual Report’, OEA/Ser.L/V/II, 30 December 2011, <www.oas.org/en/iachr/docs/annual/2011/toc.asp>, para 67.

¹⁴³ IACHR, ‘2012 Annual Report’, OEA/Ser.L/V/II.147, 13 March 2013, <www.oas.org/en/iachr/docs/annual/2012/TOC.asp>, para 162.

¹⁴⁴ IACHR, ‘2013 Annual Report’, OEA/Ser.L/V/II, 31 December 2013, <<http://www.oas.org/en/iachr/docs/annual/2013/TOC.asp>>, para 121.

¹⁴⁵ Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide [2006] OJ L 386/1.

¹⁴⁶ According to information provided by EIDHR: <www.eidhr.eu/who-are-our-partners>.

collaboration. The contributions provided with respect to human rights were directed towards the IACHR (and its rapporteurships) and the IACtHR (table 2). In addition, there are also contributions in other thematic areas including drugs, development and public security, which will however not form part of the analysis in this report (table 3 and figure 1). It is important to note that – other than e.g. its financial contributions to the United Nations – the EU does not technically consider its financial contributions to the OAS as ‘contributions’. Instead, they are technically considered as ‘grant agreements’ since the OAS does not fulfil the conditions required in the EU’s Pillar Assessments for contributions.¹⁴⁷

Table 2: Financial contributions of the EU to the IASHR

YEAR	PROJECT	RECIPIENT INSTITUTION	TOTAL
1994	Support for the Inter-American Court of Human Rights, Stage I	IACtHR	No information about amount of contribution
1995-1996	Support for the Inter-American Court of Human Rights, Stage II ECU 200,000 (Strengthen and consolidate the results achieved in Phase I, in terms of publications, operational automation and library services)	IACtHR	No information about amount of contribution
1997-1999	Support for the Inter-American Court of Human Rights, Stage III ECU 300,000 (Strengthen and consolidate the results achieved in the first and second stage of the project)	IACtHR	USD 332,592.35
2004	International Cooperation Project	IACtHR	USD 529,831.38
	Strengthening Access to Justice in the Americas	IACtHR	USD 433,346.00
2005	Strengthening Access to Justice in the Americas (Phase II)	IACHR	USD 512,414.00
2006	International Cooperation Project (2nd. Closing)	IACtHR	USD 168,232.00
2007	International Cooperation Project (settlement of the project)	IACtHR	USD 21,183.47
	Promotion of Racial and Ethnic Equality	IACtHR	USD 364,256.00
2009	Office of the Special Rapporteur for Freedom of Expression	IACHR	USD 387,050.00
2010	Strengthening the Right to Freedom of Expression in the Americas	IACHR	USD 400,152.00
	Promoting Ethnic and Racial Equality and Protecting the Rights of Traditionally Excluded Groups in Latin America	IACHR	USD 338,932.00
2012	Special Rapporteurship on Freedom of Expression	IACHR	USD 397,932.00
	Promotion of Ethnic and Racial Rights in Latin America	IACHR	USD 369,336.00
2013	Office of the Special Rapporteur for Freedom of Expression	IACHR	USD 59,233.00
2014	Supporting and Strengthening the Work of the Inter-American Human Rights System through the Promotion of the Rights of	IACHR	USD 769,763.37

¹⁴⁷ Interview with the Programme Manager of the EIDHR in DEVCO. The EU’s Pillar Assessments are available at <<http://ec.europa.eu/europeaid/companion/document.do?nodeNumber=3.3.6>>.

	the Most Vulnerable and Excluded Groups and Communities in the Americas	IACtHR	USD 222,500.10
		TOTAL:	USD 5,084,253.57

Source: OAS Department of International Affairs, 'European Union – profile' (http://www.oas.org/en/ser/dia/perm_observers/countries.asp) and the information available on IACtHR website about contribution and donations (<http://www.corteidh.or.cr/index.php/en/court-today/contributions-and-donations>);

Made by: IDEHPUCP

Taking into consideration that the total amount of EU financial contributions to the OAS between 1999 and 2014 amounted to USD 21,991,553.57,¹⁴⁸ the EU's global financial contribution to the IASHR represents 23.12% of that amount. Out of this, the EU's human rights contributions are focused on the IACHR with 74.94% (USD 3,809,914.27), while the IACtHR only received 25.06% (USD 1,274,339.30).

Table 3: EU financial contributions to the OAS by thematic area

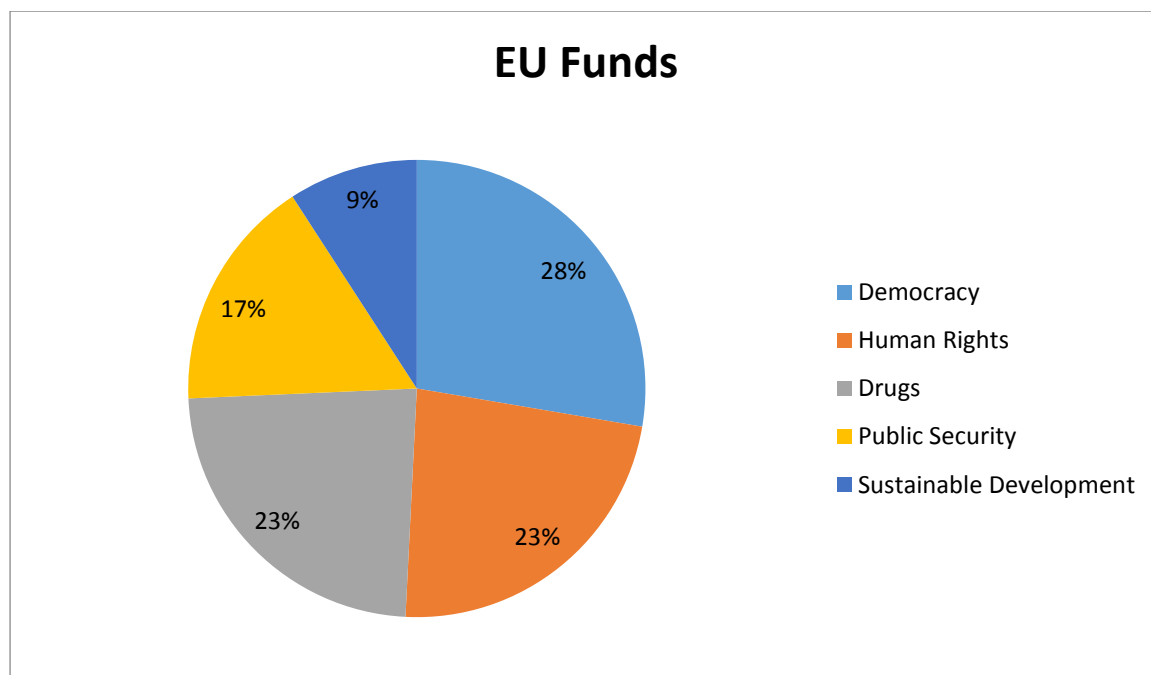
Subject	EU Funds
Democracy	USD 6'084,894
Drugs	USD 5'172,430
Human Rights	USD 5'084,253
Public Security	USD 3'637,762
Sustainable Development	USD 2'012,214
Total 1999 – 2014:	USD 21'991,553

Source: OAS Department of International Affairs, 'European Union – profile' (http://www.oas.org/en/ser/dia/perm_observers/countries.asp) and the information available on IACtHR website about contribution and donations (<http://www.corteidh.or.cr/index.php/en/court-today/contributions-and-donations>);

Made by: IDEHPUCP

¹⁴⁸ For information about EU contributions in fields other than human rights see OAS Department of International Affairs, 'European Union – profile', <www.oas.org/en/ser/dia/perm_observers/Countries.asp>.

Figure 1: EU financial contributions to the OAS by thematic area



Source: OAS Department of International Affairs, 'European Union – profile' (http://www.oas.org/en/ser/dia/perm_observers/countries.asp) and the information available on IACtHR website about contribution and donations (<http://www.corteidh.or.cr/index.php/en/court-today/contributions-and-donations>);

Made by: IDEHPUCP

Human rights and democracy together represent 51% of the EU's financial contribution. This corresponds to the EU's strong focus on human rights and democracy in its cooperation with the OAS. Furthermore, is important to note that the other issues to which the EU has allocated funds are not disconnected from the promotion of human rights. In that sense, drugs and crime (related to public security) are issues that seriously affect the enjoyment and exercise of human rights by American citizens. These issues involve serious violations of human rights and undermine democracy. Thus, through the support of projects seeking to limit and eliminate problems related to illicit drug trafficking and insecurity, the EU is also contributing to the protection of human rights and democracy in the region. The same argument applies to funds related to sustainable development. An undeveloped region is a region where people do not have access to their civil, political, economic, social and cultural rights. Therefore promoting sustainable development also involves promoting better public policy of respect for fundamental rights.

It is important to note that there is no publicly available data for the results of the various projects which have received EU funds. Thus, it is not possible for us to evaluate whether there were tangible benefits and concrete outcomes that will encourage the EU to continue its financial contributions to the IASHR. This information is kept confidential by the EU and its regional offices. It would be appropriate, in that regard, to publish periodical communications on the results of projects with EU funds in order to improve transparency and enable their analysis by institutions, universities and the general public. The access to information and public participation in the cooperation processes is also a way to strengthen democracy and human rights in the region.

It should be noted that the financial contribution of the EU to the OAS has increased in recent years. According to the annual audit of accounts and financial statements reports, in 2010 the EU was

seventh on the list of top donors of specific funds¹⁴⁹ and in 2011 dropped to tenth place,¹⁵⁰ in 2012 ascended to fifth place,¹⁵¹ in 2013 reached fourth place in the list¹⁵² and in 2014 dropped to seventh.¹⁵³ In relation to the top donors, the financial contribution of the EU is considerably smaller. According to the 2013 report, the EU contribution represented 4.6% of the total contributions to specific funds, while OAS members USA and Canada contributed 39.4% and 19.1% respectively, and the Netherlands, as a permanent observer, accounted for 12.9% of the contributions.¹⁵⁴ In 2014 the situation was similar, with the top three donors USA, Canada and the United Nations contributing 32.2%, 17.8% and 8.4% respectively and the EU's contributions amounting to 3.3%.¹⁵⁵

Finally, it should be noted that, apparently, this situation is different in the case of financial contributions from the EU to the IACHR. In that sense, according to reports on the last financial statements, financial contributions from the EU to the IACHR have been reduced. In 2010, EU contributions represented the 22% (USD 739,100) of IACHR total funds.¹⁵⁶ In 2011, there is no information about EU contributions to IACHR.¹⁵⁷ In 2012, the EU financial contributions represented 19% (USD 766,700) of the total funds of the IACHR.¹⁵⁸ And, finally, in 2013 it represented only 1% (USD 59,200) of the total IACHR funds.¹⁵⁹

¹⁴⁹ OAS – Board of External Auditors, '2010 Report to the Permanent Council: Annual Audit of Accounts and Financial Statements for the years ended December 31, 2010 and 2009', OEA/Ser.S/JAE/doc.41/11, 27 April 2011, p 38, table 4, <www.oas.org/documents/eng/press/Digital_Audit_Book_2010_English.pdf>.

¹⁵⁰ OAS – Board of External Auditors, '2011 Report to the Permanent Council: Annual Audit of Accounts and Financial Statements for the years ended December 31, 2011 and 2010', OEA/Ser.S/JAE/doc.42/12, 25 April 2012, p 38, table 4, <<http://scm.oas.org/pdfs/2012/CP28579E.pdf>>.

¹⁵¹ OAS – Board of External Auditors, '2012 Report to the Permanent Council: Annual Audit of Accounts and Financial Statements for the years ended December 31, 2012 and 2011', OEA/Ser.S/JAE/doc.43/13, 26 April 2013, p 34, table 4, <<http://scm.oas.org/pdfs/2013/CP30929E.pdf>>.

¹⁵² OAS – Board of External Auditors, '2013 Report to the Permanent Council: Annual Audit of Accounts and Financial Statements for the years ended December 31, 2013 and 2012', OEA/Ser.S/JAE/doc.44/14, 30 April 2014, p 24, table 4, <www.oas.org/en/saf/accountability/docs/201405071900-Audit-Book-FY13-EN.pdf>.

¹⁵³ OAS – Board of External Auditors, '2014 Report to the Permanent Council: Annual Audit of Accounts and Financial Statements for the years ended December 31, 2014 and 2013', OEA/Ser.S/JAE/doc.45/15, 30 April 2015, p 23, table 4, <<http://scm.oas.org/pdfs/2015/CP34447EREPORT.pdf>>.

¹⁵⁴ OAS – Board of External Auditors, '2013 Report to the Permanent Council' (n 152) p 24, table 4.

¹⁵⁵ OAS – Board of External Auditors, '2014 Report to the Permanent Council' (n 153) p 23, table 4.

¹⁵⁶ OAS, 'Specific Funds Contributions to the Inter-American Commission on Human Rights', <www.cidh.oas.org/annualrep/2010eng/2010.Contributions.to.IACHR_certified.pdf>, p 1.

¹⁵⁷ IACHR, 'Finance Sources and Execution of Resources 2011', <www.oas.org/en/iachr/mandate/finances/2011eng.pdf>, p 2.

¹⁵⁸ IACHR, 'Source of Financing and Execution of Resources 2012', <www.oas.org/en/iachr/mandate/finances/Informe%20CIDH%202012_web_Eng_final.pdf>, p 2.

¹⁵⁹ IACHR, 'Source of Financing and Execution of Resources 2013', <www.oas.org/en/iachr/mandate/finances/2013-recursos-financieros-en.pdf>, p 2.

VI. Case studies

A. Influence of the mutual cooperation on the development of the OAS human rights institutions: the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights

The influence of the EU on OAS human rights institutions needs to be analysed with regard to the political dialogue and with regard to the thematic approach. First, there is the existing political dialogue between EU and OAS representatives on key topics for the IASHR. The OAS-EU Policy Dialogue promotes the discussion on common standards on human rights and the strengthening of democracy. In addition, emphasis is placed on the need to improve Inter-American institutions to perform specific actions on these issues. Finally, these political dialogues create the possibility for the EU and the OAS to determine specific areas of cooperation, such as the destination of EU funds.

On the other hand, there is the influence of the EU thematic approach. This support is most visible in the case of the IACHR because it is possible to identify common themes among the EU Human Rights Guidelines and themes of the different rapporteurships. Although it is not possible to objectively identify a direct contribution of the EU's expertise in the work performed by various rapporteurs, it is possible to identify financial contributions on issues such as freedom of speech, racial equality and vulnerable groups. These specific contributions highlight the importance of the different topics for the EU.

In this way, it may be inferred that part of the mutual influence between EU and OAS is to identify issues that are important to both organisations. The destination of the financial contribution of the EU depends on the identification of these central topics. An example of this is the EU's contribution to publishing thematic rapporteurs' reports, such as the 'Report on the situation of African descent in the Americas' of the IACHR. The work of the IACHR's rapporteurs cannot be underestimated in the Inter-American context because their reports initiate or deepen the discussion of human rights at national and international levels. These reports allow national authorities to better tackle human rights challenges. As a result, it is possible to conclude that the financial contribution of the EU allows for the development of the rapporteurship and, therefore, influences the development of human rights in the region.

For the IACtHR, the influence is mainly economic. By providing financial contributions the EU strengthens the financial resources of the IACtHR and allows it to perform its duties better. One example is the funds granted between 1994 and 1999 in relation to the project 'Support for the Inter-American Court of Human Rights' to implement the publication of IACtHR's key documents (judgments, advisory opinions and provisional measures) and which equipped the IACtHR library to set up an electronic human rights data centre.¹⁶⁰ In addition, there are contributions that allow the IACtHR to perform its functions in the region, such as funds that make it possible for the IACtHR to

¹⁶⁰ OAS, 'Report of the Inter-American Court of Human Rights to the Special Committee on Inter-American Summits Management', OEA/Ser.G CE/GCI-134/98, 7 May 1998, <www.summit-americas.org/CEGCI%20Docs/ce-gci-134-98-English.htm>. Also in: IACtHR, 'Annual Report of the Inter-American Court of Human Rights 1998', OAS/Ser.L/V/III.43DOC. 11, 18 January 1999, <www.corteidh.or.cr/sitios/informes/docs/eng/eng_1998.pdf>, p 40.

hold sessions in various member states. For example, in 2011 the EU supported an IACtHR hearing in Colombia.

Finally, the influence of the EU at the multilateral level of cooperation with the OAS is complemented with bilateral cooperation with OAS member states, as in the case of Peru. At the multilateral level, the EU's financial contribution to the IACHR and the IACtHR improves their capacity to monitor and report on the effectiveness of human rights protection in the Americas. At the bilateral level, the protection of human rights is promoted through political dialogue with national authorities and civil society associations. This relationship also involves provision of funds by the EU. Consequently, cooperation at both levels fosters better protection of human rights and democracy in the region – even if there are no study results yet.

B. Impact of the EU activities at the level of protection of human rights in Peru

The EU develops two different strategic approaches for the protection of human rights in Peru. The first approach consists of high-level political dialogues between EU officials and Peruvian authorities. The EU bilateral cooperation with Peru was enshrined in the signature of a Memorandum of Understanding on the establishment of a mechanism for bilateral consultations on 29 October 2009¹⁶¹ and then confirmed by the Free Trade Agreement signed by the EU with Peru and Colombia on 26 June 2012.¹⁶²

The EU's bilateral cooperation with Peru is channelled through the DCI, the geographical instrument that provides economic support to all EU bilateral cooperation actions in Latin America. This approach is different from others because it is based on previous agreements with foreign governments. Since this cooperation approach is the result of political negotiations and agreements, the DCI is oriented towards the promotion of inclusive development and sustainable trade. As a result, human rights cooperation is not directly related to this cooperation strategy.

The second approach consists of cooperation with civil society. This approach does not require previous political agreements since it is operated by thematic tools such as the EIDHR. As it was previously explained, the EU grants the majority of its financial resources to cooperation with civil society, especially with various civil society associations.

1. The influence of the EU political human rights cooperation strategy in Peru

The EU provides support to human rights promotion in Peru on the basis of political dialogue and negotiations. This democracy-building effort has demonstrated positive results with the EU's financial contribution to the Peruvian Truth and Reconciliation Commission (PTRC),¹⁶³ entailing also the EU's

¹⁶¹ Memorandum of Understanding Between the European Commission and the Republic of Peru on the Establishment of a Mechanism for Bilateral Consultations, 29 October 2009, <http://eeas.europa.eu/peru/docs/mou_peru_en.pdf>.

¹⁶² Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part [2012] OJ L354/3.

¹⁶³ Presidencia del Consejo de Ministros, 'Fondo Documental de la Comisión de la Verdad y la Reconciliación Periodos: 2001 – 2003', <www.pcm.gob.pe/InformacionGral/archivo/cvr.htm>.

contribution to the construction of Peru's Place of Memory (PM).¹⁶⁴ After the internal armed conflict that damaged Peru's social cohesion and public institutions, the reconstruction efforts gathered support from the international community and from Peruvian organisations. This intractable state-building challenge synthesised by the PTRC and represented by the PM is very important in Peru since there is still a big misunderstanding about the facts that produced this violent context and about the lessons that should be taken from it.¹⁶⁵

In addition to the memory and reconciliation efforts, the EU's human rights support to Peru through political dialogue has also been crystallised in fighting the death penalty. According to the Peruvian Constitution, the death penalty is only accepted in cases of high treason in times of war and in cases of terrorism.¹⁶⁶ The former President Garcia proposed the reinstatement of the death penalty in Peruvian criminal law as a means to fight severe cases of civil violence and rape. The debate was so intense that the government made a formal proposal. The EU increased its political dialogue in order to avoid the legalization of the death penalty and the proposal was eventually rejected.¹⁶⁷ Another example of positive results of this political dialogue also took place during the administration of the former President Garcia. Before, multicultural dialogue at the political level was fragile and without formal organisation. In 2009, the Peruvian military intervention to quell indigenous protests in Bagua (Northern Peru) produced an international reaction.¹⁶⁸ These intense protests were against the extractive companies in the region, in particular in areas where indigenous people were settled.¹⁶⁹ From a human rights perspective, the EU strengthened multicultural dialogue between the government and indigenous representatives. This enhanced multicultural approach resulted in the adoption of the Law of the Right of Prior Consultation which was enacted during President Humala's administration.¹⁷⁰

As a consequence, it is possible to conclude that the EU's political human rights dialogue with Peru has been very successful because solutions were conveyed to decision makers. It is also important to note that these contributions – even if they were designed for specific cases – fostered a systematic

¹⁶⁴ On 13 October 2011 the Cooperation agreement to support the implementation of the Place of Memory was signed by the EU, the Peruvian government and the UN.

¹⁶⁵ Roxana Barrantes and Julio Berdegué, 'Peru Case Study: Great Progress, Greater Challenges' (2013) European Report on Development, <https://ec.europa.eu/europeaid/sites/devco/files/erd-research-perufinal-20130101_en.pdf>. See also Sofia Macher, *¿Hemos Avanzado?: 10 años de las recomendaciones de la Comisión de la Verdad y Reconciliación* (Instituto de Estudios Peruanos 2014).

¹⁶⁶ Constitution of the Republic of Peru art 140: 'The death penalty may only be applied in cases of High Treason in war times and terrorism, in accordance with the law and international obligations by which Peru is bound'. [translation by author].

¹⁶⁷ Interview with EU officials in Lima.

¹⁶⁸ See for instance 'Indigenous leader among 53 defendants in trial over Bagua massacre', *Fox News* (14 May 2014) <www.foxnews.com/world/2014/05/14/indigenous-leader-among-53-defendants-in-trial-over-bagua-massacre>; see also Chrystelle Barbier, 'Pérou: un procès pour condamner les responsables du massacre de Bagua', *RFI* (7 June 2014) <www.rfi.fr/emission/20140607-perou-proces-condamner-responsables-massacre-bagua>.

¹⁶⁹ See Lila Barrera-Hernandez, 'Peruvian Indigenous Land Conflict Explained', *Americas Quarterly* (12 June 2009), <www.americasquarterly.org/peruvian-protests-explained>.

¹⁷⁰ The law was enacted by President Humala in 2011. Law N°29785, Law of the Right of Prior Consultation to Indigenous or Native People, recognised in the Convention 169 of the International Labor Organization, <www.minem.gob.pe/minem/archivos/Ley%2029785%20Consulta%20Previa%20pdf.pdf>.

human rights approach with international influence. However, political dialogues are not the only strategy to develop human rights and democracy in the country.

2. The influence of the EU thematic approach to Peru

The difference between the thematic approach with classic bilateral cooperation and political dialogues was explained in previous sections. Thus, taking into consideration numbers as a means to measure the impact of EU human rights projects in Peru, the EIDHR is the best proof of the significant and increasing numbers of actions promoted in Peru by the EU. According to the information provided by the EU Delegation in Lima for the period 2007-2013, the EU funded human rights projects in Peru, through civil society organisations, with 14,333,702.23 EUR.¹⁷¹

a) Recipient institutions and projects

It is worth noting that in order to select civil organisation proposals, the decision-making procedure is done either by the EU in Brussels (EUROPEAID) or by the EU Delegation in Lima. If it concerns a national call for proposals, it is the EU Delegation in Lima which is in charge of decision-making and monitoring of the implementation process. In case of an international call for proposals, it is the EU in Brussels which is in charge of decision-making and monitoring of the implementation process.

Below is the list of institutions which received EIDHR funds for development of two or three human rights projects:

Table 4: Recipients of EIDHR funds for multiple projects

Peruvian NGOs	Centro de Atención Psicosocial (CAPS): ¹⁷² two projects ¹⁷³
	Instituto de Defensa Legal (IDL): ¹⁷⁴ two projects ¹⁷⁵
International NGOs	DIAKONA: ¹⁷⁶ three projects ¹⁷⁷

¹⁷¹ European Union, 'Cooperación Temática de la Unión Europea en el Perú', 2010, <www.bvcooperacion.pe/biblioteca/bitstream/123456789/6355/1/BVCI0006202.pdf>, pp 34-37.

¹⁷² CAPS is a non-profit organization whose aim is to promote mental health in order to contribute to the psychosocial recuperation of victims from political and social violence. For more information see <www.caps.org.pe/portal>.

¹⁷³ In November 2009 CAPS received EUR 1,052,648,00 for the project 'Strengthening Public Prosecutors Proceedings' in Peru and Ecuador'. In September 2013 CAPS received EUR 1,500,000.00 for the project 'Strengthening torture prevention strategies and rehabilitation of victims in Peru and Ecuador'.

¹⁷⁴ IDL is a Peruvian non-profit organization working on the promotion of human rights and good governance. For more information see <www.idl.org.pe>.

¹⁷⁵ In January 2009 IDL received EUR 250,000.00 for the project 'Vulnerable Military Personnel, Monitoring and Incidence from Civil Society'. In October 2010 IDL received EUR 712,419,00 for the project 'Strengthening the Andean Peace Justice and Community Network'.

¹⁷⁶ Diakona is a faith based Swedish development organization; Diakona's goal is to change unfair political, economic, social and cultural structures that generate poverty, oppression and violence. For more information see <www.diakonia.se/en>.

¹⁷⁷ In September 2010 Diakona received EUR 300,000.00 for the project 'Contributions to conflict management for land and territory in the Peruvian Amazon: For the effectiveness of Indigenous people's fundamental rights, the protection of the Amazon and Peruvian State-Building'. In June 2012 Diakona received EUR 300,000.00 for the project 'Promotion of memory process, access to justice and peaceful conflicts resolutions in areas affected by the internal armed conflict and environmental conflicts'. In February 2014 DIAKONA received EUR 265,072.00 for the project: 'Women for democracy and political participation: Building a political agenda for Gender equality in Amazons, Ayacucho, Cusco, Huancavelica, Junín and San Martín'.

Terra Nuova Centro Per Il VolontariatoOnlus:¹⁷⁸ two projects¹⁷⁹

Below is the list of institutions which received the EIDHR funds for a single human rights project:

Table 5: Recipients of EIDHR funds for a single project

Peruvian NGOs	Movimiento Manuela Ramos ¹⁸⁰
	Instituto Bartolomé de las Casas ¹⁸¹
	Capital Humano y Social Alternativo ¹⁸²
	Asociación Para La Investigación y El Desarrollo Integral – AIDER ¹⁸³
	TRANSPARENCIA ¹⁸⁴
	Coordinadora Nacional de Derechos Humanos ¹⁸⁵
	Derecho-Ambiente y Recursos Naturales – DAR ¹⁸⁶
	Asociación Pro Derechos Humanos ¹⁸⁷

¹⁷⁸ Terra Nuova is an Italian NGO; it promotes the full participation of social sectors most at risk, it also promotes projects focused on self-sufficient local development. For more information see <www.terranuova.org>.

¹⁷⁹ In November 2010 Terra Nuova received EUR 275,260.00 for the project 'Identity and Citizenship: Exercising Rights in the Sierra and Peruvian Jungle'. In September 2012 Terra Nuova received EUR 285,660.00 for the project 'Rights, Inclusion and Participation: Amazonian Indigenous People in Metropolitan Lima'.

¹⁸⁰ Partner organisations: Comunidad de Estudios Sociales y Acción Pública (CIUDADANIA (Bolivia)). Theme: 'Fortalecimiento de la democracia, interculturalidad, participación política, igualdad de género, interculturalidad (mujeres quechuandinas) y el fortalecimiento de la ciudadanía'.

¹⁸¹ Partner organisations: Secretaría Ejecutiva del Movimiento Ciudadano Para Que No Se Repita. Theme: 'Implementación de una agenda nacional de Derechos Humanos basada en la memoria, verdad, justicia, reparaciones, reformas institucionales y reconciliación, desde la diversidad e interculturalidad, fortalecimiento de la sociedad civil'.

¹⁸² Theme: 'Promoción de los derechos humanos en víctimas a la trata de personas, trato ilícito de migrantes y personas desaparecidas; participación ciudadana en la auditoría social de la implementación de las políticas públicas en las materias del proyecto'.

¹⁸³ Partner organisations: Derechos, Ambiente y Recursos Naturales (DAR). Theme: 'Estableciendo vínculos entre Gobierno empresas y pueblos indígenas en la región Ucayali, afectados por la extracción de recursos naturales, para el reconocimiento de sus derechos y la construcción de agendas colaborativas'.

¹⁸⁴ Partner organisations: Centro de Promoción y Estudios de la Mujer Andina 'Lulay' (CEPEMA). Theme: 'Tendiendo puentes entre los Partidos o Movimientos Políticos y las Organizaciones Defensoras de los Derechos Humanos en la Región Junín'.

¹⁸⁵ Theme: 'Promover los principios de igualdad y no discriminación, formular estrategias nacionales y capacidad de propuesta para la legislación local, nacional, contribuir a la sensibilización en torno al tema de la igualdad de derechos'.

¹⁸⁶ Partner organisations: Derechos, Ambiente y Recursos Naturales (DAR). Theme: 'Estableciendo vínculos entre Gobierno empresas y pueblos indígenas en la región Ucayali, afectados por la extracción de recursos naturales, para el reconocimiento de sus derechos y la construcción de agendas colaborativas'.

¹⁸⁷ Partner organisations: Asociación Ministerio Diaconal Paz y Esperanza, Asociación Pro Derechos Humanos (APRODEH), Centro de Iniciativas para el Desarrollo Humanos (CEIDHU), Centro Amazónico de Antropología y Aplicación Práctica (CAAAP) and Instituto de Defensa Legal (IDL). Theme: 'Implementación de las recomendaciones del Informe Final de la Comisión de la Verdad y Reconciliación, apoyo a las redes de organizaciones de víctimas del conflicto armado interno 1980-2000'.

	Asociación Servicios Educativos Rurales – SER ¹⁸⁸
	Centro de Desarrollo e Investigación de la Selva Alta –CEDISA ¹⁸⁹
	Acción por los Niños ¹⁹⁰
	Instituto Peruano de Educación en Derechos Humanos y la Paz – IPEDEHP ¹⁹¹
International NGOs	Progettomondo Movimento LaiciAmerica Latina (ProgettomondoMlal) ¹⁹²
	Standing International Forum on Ethnic Conflict, Genocide & Human Rights – International Alert ¹⁹³
	CARE International UK ¹⁹⁴
	Care France ¹⁹⁵
	International Center for Transitional Justice ¹⁹⁶

¹⁸⁸ Partner organisations: Instituto de Investigación y Promoción de Desarrollo y Paz en Ayacucho (IPAZ). Theme: ‘Apoyo a procesos de reconciliación después de conflicto armada, igualdad de género y ejercicio derechos de las mujeres, proceso de memoria colectiva de acciones que apoyaron procesos de paz’.

¹⁸⁹ Partner organisations: Asociación Movimiento El Pozo. Theme: ‘Prevenir los delitos contra los derechos y la dignidad humana, la lucha contra la trata de niñas, niños y adolescentes con fines de explotación sexual o comercial, contribuir a la sensibilización ciudadana y trabajar con los medios de comunicación acerca de la importancia de este tema’.

¹⁹⁰ Partner organisations: Coordinadora Nacional de Radio (CNR). Theme: ‘Prevenir los delitos contra los derechos y la dignidad humana, lucha contra la trata, conformación de redes sociales en las instituciones locales, regionales y del Estado para la promoción de mediadas establecidas en la legislación nacional (Código del Niño y del Adolescente y Plan Nacional de Acción por la Infancia 2002-2010)’.

¹⁹¹ Partner organisations: Comisión Ecuémica de Derechos Humanos (CEDHU (Ecuador)) e Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG). Theme: ‘Contribuir a la erradicación de la tortura y otros tratos crueles, inhumanos y degradantes en Perú, Ecuador y Guatemala’.

¹⁹² Partner organisations: Instituto Peruano de Educación en Derechos Humanos y la Paz (IPEDEHP) and Equipo Peruano de Antropología Forense (EPAF). Theme: ‘Recuperación de la memoria individual y colectiva, apoyo a procesos de reconciliación y reparación, a organizaciones de afectados por la violencia y políticas públicas de reparación’.

¹⁹³ Partner organisations: Instituto de Estudios para el Desarrollo y la Paz (INDEPAZ (Colombia)), Corporación de Gestión y Derecho Ambiental (ECOLEX (Ecuador)) and Centro de Colaboración Cívica (Perú). Theme: ‘Resolución de conflictos, conciliación pacífica de intereses entre sociedad civil y Estado, promoción de los derechos humanos de comunidades indígenas y afrodescendientes, participación ciudadana a nivel local, apoyo a redes de la sociedad civil’.

¹⁹⁴ Partner organisations: Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo (CBDHDD (Bolivia)), Comité de Derechos Humanos de Shushufindi (Ecuador) y Coordinadora Nacional de Derechos Humanos (CNDDHH (Perú)). Theme: ‘Promoción de los Derechos de las Comunidades, participación democrática de organizaciones indígenas amazónicas, gestión de los recursos naturales y del desarrollo sostenible de la región amazónica’.

¹⁹⁵ Partner organisations: Confederación de Nacionalidades Amazónicas del Perú (CONAP), Centro Amazónico de Antropología y Aplicación Práctica (CAAP) and International Labour Organisation (ILO). Theme: ‘Promover el cumplimiento de los compromisos internacionales de Derechos Humanos, difusión del convenio 169 de la OIT, respecto a derechos de los pueblos indígenas, participación en los procesos y Mesas de Diálogo entre el Estado, Sociedad Civil y Pueblos Indígenas’.

¹⁹⁶ Partner organisations: Asociación Ministerio Diaconal Paz y Esperanza, Asociación Pro Derechos Humanos (APRODEH), Centro de Iniciativas para el Desarrollo Humanos (CEIDHU), Centro Amazónico de Antropología y Aplicación Práctica (CAAAP) and Instituto de Defensa Legal (IDL). Theme: ‘Implementación de las recomendaciones del Informe Final de la Comisión de la Verdad y Reconciliación, apoyo a las redes de organizaciones de víctimas del conflicto armado interno 1980-2000’.

After an analysis of all projects that received EU funds between 2007 and 2013, the following stand out as the most important human right issues for EU contributions: indigenous peoples (8 projects), transitional justice (6 projects), and gender equality and violence against women (4 projects).¹⁹⁷ Regarding the contribution to the protection and development of the rights of indigenous peoples and the protection of women, it is important to note that the EU has also made contributions to the IACHR for projects related to these issues. In relation to these themes the policy of EU contributions appears to be consistent and systematic.

Concerning support for projects related to transitional justice, as previously indicated, this is an issue that still has ample space for discussion and action in Peru because it is a post-conflict country. In this regard, the EU's contribution supports the strengthening of democracy, the possibility of reparations for victims and the building of a new concept of citizenship that involves all Peruvian people. These contributions to Peruvian society consequently appear particularly important and should be continued and expanded in the future.

According to our interview partners at the EU Delegation in Peru, the majority of the EU funded projects achieved full compliance and fulfilled the specific objectives set out in the work program. However, there is no publicly available data that allows us to identify either how these results affected the Peruvian society or whether they are sustainable in the long term. Again, similarly to the issues raised with regard to EU funding of the IASHR, it is necessary to consider and discuss the need to make available the results of projects to civil society, so that the results can be duly analyzed and studied.

Additionally, the new EIDHR budget was established for the period 2014-2020 for a total amount of EUR 1.3 billion.¹⁹⁸ The new budget entails new strategies¹⁹⁹ and simplification procedures for proposals.²⁰⁰ A new human rights facility has been created for new calls for proposals and a new EU human rights defenders mechanism for ongoing operations, in compliance with a new EU Human Rights Toolbox for all Human Rights Cooperation Programs.²⁰¹

¹⁹⁷ See also Susanne Gratius, 'EU Democracy Promotion in Latin America: More a Tradition than a Policy' (2011) 16 *European Foreign Affairs Review* 689, 694 et seq.

¹⁹⁸ CONCORD, 'Guide to EuropeAid funding instruments 2014-2020: CSO Engagement in EU development cooperation', <www.concordeurope.org/images/Guide_to_EuropeAid_funding_instruments_2014-2020.pdf>, p 20.

¹⁹⁹ The new EIDHR places a strong emphasis on vulnerable groups, see: European Commission, 'The Multiannual Financial Framework: The External Action Financing Instruments', memo, 11 December 2013, <http://europa.eu/rapid/press-release_MEMO-13-1134_en.htm>.

²⁰⁰ The new EIDHR strengthens the position of civil society. See Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action [2014] OJ L77/95.

²⁰¹ European Commission, 'Commission staff working document: Tool-box, A rights-based approach, encompassing all human rights for EU development cooperation', SWD(2014) 152 final, 30 April 2014.

VII. Assessment of the EU-OAS human rights cooperation: consistency, leadership and influence of the EU

To assess the effectiveness of the EU human rights cooperation, it is necessary to analyse it from a multilateral perspective and from a bilateral perspective.

A. Consistency of the multilateral EU-OAS human rights cooperation

1. EU leadership in human rights and democracy

As it was described in section V, the EU concentrated most of its financial help, regarding human rights *strictu sensu*, on the IACHR.

Increasing numbers of human rights cases before the IACHR and the IACtHR compel these institutions to request contributions from member states and permanent observers in order to fulfil their mandate. The analysis of the contributions of the EU to the OAS and the IACHR made in section V.2.B shows that EU contributions to the OAS have been increasing in the past years, but that the specific contributions to the IACHR are shrinking. This indicates that while the EU works extensively with the OAS, this does not necessarily result either in a greater contribution in the field of human rights or in greater support to the IACHR and IACtHR.

With regard to the thematic approach, according to the information provided by the EU Permanent Mission to the OAS, the agreement signed on 19 March 2014 provides outstanding support to the promotion of the rights of the most vulnerable and excluded groups and communities in the Americas. Currently the protection of the most vulnerable groups at the level of OAS member states is still far from the standard of protection achieved by the EU and its member states. The EU is aware of this challenge and seeks to expand the scope of the protection of these human rights using its financial support.

Through the OAS-EU agreement, the EU seeks to promote and protect human rights in the region with financial support to the IACHR and the IACtHR. The EU-OAS agreement is related to Programme 4 'Thematic Areas' of IACHR Strategic Plan 2011-2015.²⁰² In that sense, the aim of the agreement is to strengthen the protection of the rights of certain groups, communities and peoples, particularly vulnerable groups, such as women, children, indigenous peoples, afro-descendants and LGBTI. It also addresses issues of great concern for the IASHR, including impunity, inhumane treatment and conditions in prisons, and the security and protection of the rights of human rights defenders. In this regard, the agreement also appears to contribute to strengthening the work of nine rapporteurships and a thematic unit of the IACHR. The only rapporteurship excluded is the one related to freedom of expression, given that it is the only one with sufficient financial resources to discharge its mandate.²⁰³

In relation to the IACtHR, the EU-OAS agreement seeks to support 'the Court's awareness-raising and capacity-building activities that are aimed at enhancing the knowledge and understanding of its role and work by the general public, justice operators, authorities and other stakeholders'.²⁰⁴ Considering

²⁰² IACHR, 'Strategic Plan 2011-2015 (n 32) pp 89-92.

²⁰³ EIDHR, 'Annual Action Programme 2013' (n 6) action fiche 9.

²⁰⁴ *ibid.*

this, it is possible to conclude that the EU fulfils its commitment to promote the protection of human rights in the OAS member states through the strengthening of the IACtHR capacities and its work.

In other words, the EU establishes political dialogues and sets up thematic cooperation programs in order to reinforce IASHR effectiveness. The EU seeks to promote human rights protection in the Americas by reinforcing OAS human rights institutions. There are indications that the EU works in coordination with the IASHR, especially for the thematic areas prioritised by the EU.

2. Assessments tools

According to the information provided by DG DEVCO, the EU developed sophisticated and participative instruments in order to measure the progress and effectiveness of all EU grants agreements and contributions. They are applied for all grants to the OAS.

The EU monitors the implementation process of all grants allocated to the OAS through the EU Project Cycle Management.²⁰⁵ This instrument tracks the implementation by beneficiaries' institutions. Part of this management framework is the 'logical-frame' tool.²⁰⁶ The logical-frame tool analyses the integral project as a whole and not divided as isolated units. In order to do so, and to respond appropriately to EU requirements, the EU provides beneficiary institutions with an official template for financial aspects and implementation narrative.

Transparency is ensured through external audits and through the participation of consultants whose tasks are to observe aspects of the implementation procedure of the grants. This long-term monitoring methodology is guided by the Results Oriented Monitoring Mechanism. In addition to this monitoring procedure, EU Project Managers also visit beneficiary institutions.²⁰⁷ Thereupon, according to the information received from DG DEVCO in Brussels, the money transferred by the EU to the OAS is technically considered a 'grant' and not a 'contribution' because the OAS failed to fulfil the control requirements for contributions, while grants have lesser requirements in terms of audits and controls.

²⁰⁵ European Commission, 'Aid Delivery Methods: Volume 1 – Project Cycle Management Guidelines', March 2004, <http://ec.europa.eu/europeaid/sites/devco/files/methodology-aid-delivery-methods-project-cycle-management-200403_en_2.pdf>.

²⁰⁶ For more information see: Government of the Republic of Serbia, European Integration Office, 'Guide to the Logical Framework Approach: A key tool for Project Cycle Management', 2nd ed, 2011, <www.evropa.gov.rs/Evropa/ShowDocument.aspx?Type=Home&Id=525>.

²⁰⁷ According to the information provided by DG DEVCO, for the moment there are no results on the last cooperation projects with the OAS.

B. Influence of the EU's bilateral human rights cooperation with Peru

The EU's influence on human rights issues in Peru cannot be underestimated. Until recently, Peru struggled with chronic poverty, weak public institutions and systemic violence,²⁰⁸ which resulted in the deterioration of the state's ability to protect fundamental rights.²⁰⁹

Peru's economic growth and increasing state-building efforts, through public policy²¹⁰ and the judicial system²¹¹, are still far from guaranteeing effective human rights protection. In this context, the EU's human rights contribution to Peru is extremely important. The EU reinforced social justice and memory efforts supporting, for example, the previously mentioned Truth and Reconciliation Commission and the construction of the '*Lugar de la Memoria, la Tolerancia y la Inclusión Social*' (LUM, Place of Memory, Tolerance and Social Inclusion).²¹² The LUM is a project aiming to create a space for meeting, for commemorating and for discussing the facts of violence that occurred between 1980-2000 in Peru. It is important to note that the creation of the LUM was driven by Germany during the V Summit of Latin America, the Caribbean and the European Union organized by Peru in 2008. On that occasion Germany offered a grant of EUR 2 million to finance the construction and maintenance of a Museum of Memory. Peru accepted the grant and created a high-level commission that proposed the LUM. Due to the positive economic developments, the nature of the cooperation with Peru is changing from classic development cooperation to a partnership association. According to the European Commission '[t]his may result in less or no EU development grant aid and the pursuit of a different development relationship based on loans, technical cooperation or support for trilateral cooperation'.²¹³ Nevertheless, the EU's financial assistance to Peru is still substantial. According to Commissioner Piebalgs, for the period 2014-2017 the cooperation with Peru will reach EUR 66 million in order to combat child malnutrition, better access to health and social services.²¹⁴

From a human rights perspective, the EU's main actions in Peru include its support for human rights and human rights defenders; financial contributions to civil society projects, as well as the support for democracy, for example, with the EU training provided to the Peruvian security forces on the awareness on the prevention of torture.²¹⁵ The latter is also considered a landmark action due to the

²⁰⁸ Truth and Reconciliation Commission, 'Final Report', <<http://idehpucp.pucp.edu.pe/tipo/informe-final>>.

²⁰⁹ Human Rights Watch, 'Annual Report, Peru', 2014, <www.hrw.org/world-report/2014/country-chapters/peru?page=1>.

²¹⁰ Alberto Castro (ed), *Buen Gobierno y Derechos Humanos: Nuevas Perspectivas en el Derecho Público para Fortalecer la Legitimidad de la Democracia de la Administración Pública en el Perú* (Instituto de Democracia y Derechos Humanos and Pontificia Universidad Católica del Perú 2014).

²¹¹ Francisco Macedo (ed), *Los Caminos de la Justicia Penal y los Derechos Humanos* (Instituto de Democracia y Derechos Humanos and Pontificia Universidad Católica del Perú 2007).

²¹² European Commission, 'Memorandum to the Relevant Committee Concerning Annual Action Programme 2011 in favor of Peru covered by the Programming Document Country Strategy Paper 2007-2013 for the Development Cooperation Instrument', C-DEVC.B (2011) 341366.

²¹³ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Increasing the impact of EU Development Policy: an Agenda for Change', COM(2011) 637 final, 13 October 2011, p 10.

²¹⁴ European Commission, 'EU Commissioner announces significant new funding for Peru during visit', press release, 21 July 2014, <http://europa.eu/rapid/press-release_IP-14-853_en.htm>.

²¹⁵ EuropeAid, 'Human rights and democracy: Torture prevention in Peru, Ecuador and Guatemala – Education, awareness raising and dissemination of practices of torture prevention for military and police authorities', <http://ec.europa.eu/europeaid/documents/case-studies/latin-america_torture-prevention_en.pdf>.

frequent human rights violations committed by public security forces or with the electoral observation missions. In addition, the EU supported key actors and processes, including international and regional mechanisms and instruments on human rights. For this last point, it is important to note the EU achievement in the implementation of the project to combat human trafficking.²¹⁶ Recent data demonstrates that Peru is a major source of human trafficking.²¹⁷ Since these crimes concern all Peruvian regions, the EU supported nine civil audits in 21 universities nation-wide. The activities were also oriented towards the strengthening of Peruvian authorities' law enforcement measures against traffickers.

Finally, another important element of the EU human rights cooperation with Peru is the EU's support for civil society. Indeed, the EU's political dialogue with Peru, albeit very important, must reach a consensus between both parts and thus it may take a long time depending on the political will of the negotiating parties. The cooperation through civil society is based on different tools. It does not require previous political agreements, which allows for greater flexibility. As a result, the scope of the activities and areas enhanced by the EU have a more significant impact and improve the social activism. In other words, the EU's strategy to influence the situation of human rights in Peru is a top-down and bottom-up strategy applying pressure to political actors while simultaneously boosting civil society awareness at the same time. As a result, the EU influenced the promotion of indigenous people's rights, transitional justice and the fight against human trafficking.

²¹⁶ EuropeAid, 'Derechos humanos y democracia: Organización ciudadana contra la trata de personas en Perú – La sociedad supervisa el cumplimiento de las políticas públicas', <http://ec.europa.eu/europeaid/documents/case-studies/peru_human-rights_chs_es.pdf>.

²¹⁷ United States Department of State, '2014 Trafficking in Persons Report – Peru', 20 June 2014, available at <www.state.gov/j/tip/rls/tiprpt/2014/index.htm>.

VIII. Conclusions

In light of the EU's dual commitment to human rights and to effective multilateralism, this report sought to map the EU-OAS human rights cooperation, critically assessing this cooperation from a policy and institutional perspective, identifying specific and structural flaws in the EU's approach and looking for creative ways to facilitate the relationship between the EU and the OAS. To that end, the report provided an overview of the legal and policy framework which guides EU-OAS relations and maps the major human rights stakeholders on both sides. It presented and examined the Union's substantive human rights goals and objectives in its cooperation with the OAS and took a closer look at the tools and methods that are employed. Finally, two case studies contextualised the findings – both at the regional level (IACHR and IACtHR) and at the member state level (Peru).

With the entry into force of the Lisbon Treaty, human rights and effective multilateralism have been enshrined in EU primary law as two of the guiding principles of EU external action. A multitude of policy documents have since aimed to operationalise these principles by setting concrete priorities and defining implementation strategies. Both, the EU and the OAS seek to engage with other international and regional organisations which share their purposes. Consequently, the EU (then the European Community) was granted permanent observer status at the OAS in 1989. Cooperation between both organisations was additionally strengthened through the conclusion of a Memorandum of Understanding in 2009. It provides the framework for inter-institutional dialogue and cooperation and serves as the basis for a political dialogue, which includes topics concerning human rights and democracy.

The two main organs of the IASHR are the IACHR and the IACtHR. While the former contributes to the promotion and protection of human rights through the work of its rapporteurs, through reports, recommendations and precautionary measures, the latter can issue binding decisions and award reparations to victims, provided that its jurisdiction has been accepted by the respective state. In addition, the OAS has a multitude of specialised and other institutions with human rights relevance, ranging from the General Assembly of the OAS to the Inter-American Commission of Women. On the EU side, the Council of the EU is mandated with the development of human rights policies, which are then implemented by the HR/VP and the EEAS. In addition, the EUSR and the European Parliament have frequently engaged with the OAS on human rights issues.

Substantive human rights goals and objectives of the EU for its engagement with the OAS can be derived mainly from the Memorandum of Understanding, from the Strategic Framework and Action Plan and from the EU Human Rights Guidelines. They include among others freedom of expression, the promotion of ethnic and racial equality, the death penalty and the rights of the most vulnerable groups. Nevertheless, contrary to what can be seen at the example of relations between the EU and the UN, there are no specific policy documents identifying certain thematic human rights issues or methods of cooperation in the EU's bilateral relations with the OAS.

The tools and methods employed by the EU in its cooperation with the OAS can be divided into a political and a thematic approach. The first consists of a diplomatic and political dialogue between EU and OAS representatives, the second of support for thematic lines using cooperation agreements and financing tools. Financial support is essential in implementing the thematic lines. It flows primarily through EIDHR and DCI. The EU has provided funds to the OAS since 1994. Human rights and democracy are at the core of the EU's financial contribution, with a considerable share of the funds

going to the IACHR. In 2014, the EU ranked seventh on the list of major donors to specific funds, its contribution being considerably smaller than the ones of the top donors.

With regard to the IACHR and the IACtHR, the EU's influence appears to be mainly economic. Financial contributions of the EU to the IACHR have influenced the choice of the thematic areas selected by the latter. The financial contributions to the IACtHR allow the latter to perform its duties more effectively, for example by providing funds for the publication of judgments, advisory opinions and provisional measures.

Similar tools are implemented by the EU at the bilateral level. As it was illustrated by the example of the Republic of Peru, political dialogue and financing are used by the EU in its bilateral relations with the OAS member states. In terms of financing, the important feature is that a significant part of the funding is granted to civil society organisations for specific projects.

The research shows that the EU has a significant impact on the internal and public work of the IACHR and the IACtHR – the OAS bodies most relevant from the perspective of human rights. Along with this international impact, at the national level the Union's biggest contribution in Peru is based on civil society human rights projects implemented nationwide. Although EU-OAS human rights cooperation yields essentially positive results at the regional and national level, further coordination is required in order to achieve EU internal mandates.

In that sense, it appears advisable to establish priority areas for cooperation to connect the support given to the IASHR with the funds assigned to the various states in the region. This would allow the EU to work on the same thematic issues at the regional and at the national level with possibly greater results. Also, coordination with other donors to the OAS would allow the EU to identify common interests and to avoid the repetition of efforts. Secondly, it appears necessary to ensure greater transparency for EU funded projects, including the publication of the results and the analysis of their long-term achievements. This would allow for enhanced dialogue with the academic institutions and civil society and the possibility of a feedback from them. The first step in this sense would be to organize the data available on EU-OAS cooperation and to create a unique database. The research shows that important information exists but that it is neither accessible nor well organized, making it difficult to analyse how EU-OAS cooperation evolved over the years. Subsequently, it appears important to compare this information with EU cooperation at the national level. This will allow future EU contributions to the American region to have even more positive results and greater impact.

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